

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

Crl. Jail Appeal No. D – 75 of 2013
[Confirmation case No.03 of 2016]

Before;

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

Appellants: Imamuddin son of Mohammad Sulleman Channa and
Nazeer Ahmed son of Mohammad Chana,
through Mr. Muhammad Jameel Ahmed, advocate.

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

Date of hearing: 29-10-2019.

Date of decision: 29-10-2019.

J U D G M E N T

The appellants Imamuddin and Nazir Ahmed voluntarily appeared at PS Bhan and confessed killing of Mst. Nasim and Ameer Bux by causing them hatchet blows, such case against them was registered by ASI Haji Munawar Ali on behalf of State. Subsequently, Muhammad Bux, who happened to be brother of deceased Ameer Bux after having recourse under Section 22-A & B Cr.P.C lodged his separate FIR for the above said incident. On investigation, such FIR was recommended by the police to be disposed of under "C" class, such recommendation was not accepted by learned trial Magistrate, consequently he took cognizance of the incident / offence, on both FIR and then sent-up the case to the Court of Sessions for its trial. Those then were assigned for its disposal to learned Additional Sessions Judge, Sehwan, who amalgamated both the above said

cases and then charged the appellants and co-accused Muhammad Usman and Muhammad Saddique, it was denied by them.

2. The prosecution in order to prove the charge, examined witnesses of both the cases and then closed the side. The appellants, co-accused Muhammad Usman and Muhammad Saddique in their statements recorded u/s 342 Cr.P.C denied the prosecution allegation by pleading innocence, they did not examine anyone in their defence or themselves on oath.

3. On conclusion of the trial, learned trial Court acquitted co-accused Muhammad Usman and Muhammad Saddique while imposed death penalty upon the appellants with fine of Rs.100,000/=each payable to the legal heirs of the said deceased subject to confirmation by this Court vide its judgment dated 2nd October, 2013, which is impugned by the appellants before this Court, same is being disposed of by this Court together with the reference for confirmation of death sentence, which is made by learned trial Court.

4. After arguing the instant appeal at some length, it was stated by learned counsel for the appellants that 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.

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

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

7. The allegation of death of the deceased at the hands of the appellants, the prosecution has been able to prove through evidence of Muhammad Buxal and ASI Haji Munawar Ali, who happened to be the complainant of both the above said FIRs. Whatever, is stated by them against the appellants is supported by their witnesses / 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 appellants beyond shadow of doubt.

8. However, the sentence of death awarded to the appellants is calling for modification for the reason that there was no deep rooted enmity between the parties 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 appellants on two counts is modified with rigorous imprisonment for life with fine of Rs.100,000/-(One Lac) each, payable to legal heirs of above said deceased and in case of their failure to make payment of fine, they would undergo Simple Imprisonment for six

months. The conviction and sentences awarded to the appellants to run concurrently with benefit of section 382-B Cr.P.C.

9. 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”.

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

Judge

Judge

Ahmed/Pa