

IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD
Criminal Appeal No.D-72 of 2008
{Confirmation Case No.04 of 2008}

Before;

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

Appellants: Sabir son of Nazar Muhammad,
Through M/s Omparkash H. Karmani and
Hameedullah Dahri, advocates.

State: Ms. Rameshan Odh, A.P.G

Date of hearing: 06.11.2019

Date of decision: 06.11.2019

J U D G M E N T

IRSHAD ALI SHAH, J. The facts in brief necessary for passing the instant judgment are that the appellant with Sodho and Abdullah allegedly in furtherance of their common intention committed Qatl-e-Amd of Master Niaz Hussain, for that they were booked and reported upon.

2 At trial, the appellant and co-accused Sodho and Abdullah did not plead guilty to charge and prosecution to prove it, examined complainant Shahnawaz and his witnesses and then closed the side.

3. The appellant and co-accused Sodho and Abdullah during course of their examination u/s 342 Cr.PC denied the prosecution allegation by pleading innocence. They did not examine

anyone in their defence or themselves on Oath to disprove prosecution allegation.

4. On conclusion of the trial, the appellant and co-accused Sodho and Abdullah were found guilty for the aforesaid offence, therefore, by judgment dated 31.07.2008 were awarded death penalty subject to confirmation by this Court.

5. The appellant and co-accused Sodho and Abdullah (on death their appeal stand abated) by way of instant appeal impugned the above said judgment while learned trial Court had made a reference u/s 374 Cr.P.C for confirmation of death sentence, which are now being disposed by way of instant judgment.

6. After advancing the arguments at some length, learned counsel for the parties were fair enough to say that they would be having no objection, if death sentence awarded to appellant Sabir is modified into rigorous imprisonment of life with compensation to legal heirs of deceased, by taking the mitigating circumstances of the case into consideration.

7. It was the case of the prosecution that the appellant and co-accused Sodho and Abdullah (now have died) in furtherance of their common intention in order to avenge old enmity committed Qatl-e-amd of deceased Niaz Hussain by causing him fire shot and hatchet injuries. The prosecution by way of cogent evidence has been able to prove the liability of the appellant towards incident.

8. However, the death sentence awarded to appellant Sabir is concerned, it requires to be modified simply for the reason that no specific injury with hatchet to the deceased is attributed to him and learned counsel for the parties have consented for modification of death sentence into Rigorous Imprisonment for life, which we think they have rightly consented in the circumstances of the case.

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. In view of above, the death sentence awarded to appellant Sabir for an offence punishable u/s 302(b) PPC for having committed Qatl-e-Amd of Niaz Hussain is modified into Rigorous Imprisonment for life with fine of Rs.50,000/- payable to legal heirs of the deceased as compensation and in case of his failure to make payment of fine he would undergo Simple Imprisonment for 03 months with benefit of section 382-B Cr.PC

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

J U D G E

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Ahmed/Pa.