

IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD
Criminal Appeal No.D-125 of 2017
{Confirmation Case No.21 of 2017}

Before;

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

Appellant: Waseem son of Dadan Nizamani,
Through Mr. Ghulamullah Chang, advocate.

State: Mr. Shahzado Saleem Nahiyoon, D.P.G.

Date of hearing: 07.11.2019

Date of decision: 07.11.2019

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 allegedly has committed Qatl-e-Amd of Irfan Ali by causing him fire shot injuries, for that he was booked and reported upon.

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

3. The appellant during course of his examination u/s 342 Cr.PC denied the prosecution allegation by pleading innocence by stating that the Kalashnikov has been foisted upon him. He did not examine anyone in his defence or himself on Oath to disprove the prosecution allegation against him.

4. On conclusion of the trial, the learned 5th Additional Sessions Judge, Hyderabad vide his judgment dated 15.11.2017 awarded the death penalty to the appellant and then made a

reference with this Court for its confirmation, which is being disposed of together with the appeal of the appellant by way of instant judgment.

5. It is contended by learned counsel for the appellant that the appellant being innocent has been involved in this case falsely by the complainant party; the FIR has been lodged with delay of about four hours; the 161 Cr.P.C statements of the PWs have been recorded with delay of two days even to FIR; the appellant has not been confronted with the report of the Forensic Expert during course of his examination u/s 342 Cr.P.C and SIO / SIP Mehmood Ali Bhatti has not been examined by the prosecution on account of his death. By contending so, he sought for acquittal of appellant.

6. It is contended by learned D.P.G for the State that the prosecution has been able to prove its case against the appellant beyond shadow of doubt and the infirmities which have been pointed out by learned counsel for the appellant at the most could be treated as the mitigating circumstances. By contending so, he was fair enough to say that he would be having no objection if, the death sentence awarded to the appellant is modified into Rigorous Imprisonment for Life with compensation payable to legal heirs of deceased.

7. In response to above, learned counsel for the appellant was fair enough to say that he would not press the disposal of the instant appeal on merit if, the death sentence awarded to the

appellant is modified into Rigorous Imprisonment for Life with compensation payable to legal heirs of the deceased, as is suggested by learned D.P.G for the State.

8. The complainant and his witnesses are unanimous in their version that it was the appellant who committed Qatl-e-amd of the deceased by causing him fire shot injuries. On arrest from appellant has been secured Kalashnikov allegedly used in commission of incident. In that situation, learned trial Court was right to conclude that the prosecution has been able to prove its case against the appellant beyond shadow of doubt.

9. However, the death sentence awarded to the appellant requires to be modified for the reasons already discussed above and it is rightly consented to be modified by learned counsel for the parties. It is modified accordingly with Rigorous Imprisonment for life with compensation of rupees one lac payable to the legal heirs of the deceased and in case of default whereof the appellant would undergo Simple Imprisonment for three months, with benefit of section 382-B Cr.P.C.

10. 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”.

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

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