

IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD
Criminal Jail Appeal No.D-43 of 2013
{Confirmation Case No.09 of 2013}

Before;

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

Appellants: Din Muhammad son of Qasim Chalko,
Through Mr. Muhammad Hassan Chang,
advocate

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

Date of hearing: 12.11.2019

Date of decision: 12.11.2019

J U D G M E N T

It is alleged that the appellant in order to settle his matrimonial dispute committed Qatl-e-Amd of Khair Muhammad by causing him spade blows, 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 Ghulam Mustafa and his witnesses and then closed the side.

3. The appellant in his statement recorded u/s 342 Cr.PC denied the prosecution allegation by pleading innocence by stating that he has been involved in this case falsely by the complainant party. 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 Sessions Judge, Badin found the appellant guilty for an offence punishable u/s 302(b)

PPC and then vide his judgment dated 28.05.2013 awarded the death penalty to the appellant with compensation of Rs.100,000/-payable to the legal heirs of deceased and in case of his failure to make payment of compensation to undergo Simple Imprisonment for one month 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 in order to satisfy their dispute with him over matrimonial affairs; the FIR has been lodged with delay of about two days and 161 Cr.P.C statements of the PWs have been recorded with further delay of one day even to FIR. By contending so, he sought for acquittal of appellant.

6. It is contended by learned A.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, she was fair enough to say that she would be having no objection if, the death sentence awarded to the appellant is modified with Rigorous Imprisonment for Life with compensation payable to legal heirs of the deceased.

7. In response to above, learned counsel for the appellant was fair enough to consent to the proposal advanced by learned A.P.G for the State. By consenting so, he gone to the extent of saying that he would not press the disposal of instant appeal on merit, if the death sentence awarded to the appellant is modified with the sentence of Imprisonment for Life.

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 spade blows. On arrest from appellant has been secured the spade allegedly used by him in commission of incident. 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 shadow of doubt.

9. However, the death sentence awarded to the appellant requires to be modified for the reasons that there was no deep rooted enmity between the parties and such modification is also consented by learned A.P.G for the State. 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.

J U D G E

J U D G E