

IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD
Criminal Appeal No.D-28 of 2015
{Confirmation Case No.04 of 2015}

Before:

Mr. Justice Irshad Ali Shah
Mr. Justice Amjad Ali Sahito

Appellant: Asghar S/o Khamiso
Through M/s. Om Parkash and Ghulamullah
Chang, advocates.

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

Date of hearing: 14.11.2019
Date of decision: 14.11.2019

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 Gul Muhammad a boy aged of six years after committing rape with him and then caused disappearance of his dead body in order to save him from legal consequences, 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 Pandi 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 stating that he has been involved in this case falsely and his confessional statement was got

recorded by the police after putting his brother under wrongful confinement. 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 Additional Sessions Judge, Tando Adam found the appellant guilty for offence(s) punishable u/s 377 and 302(b) PPC, therefore, vide his judgment dated 26.03.2015 convicted and sentenced him as under;

“(1) Rigorous Imprisonment for a term of 10 years for committing carnal intercourse U/S 377 PPC and fine of Rs.1,00,000/-(Rupees One Hundred Thousand only) to the legal heirs of deceased and in default of fine he will suffer imprisonment of six months. Accused is also entitled benefit of Section 382-B Cr.P.C.

(2) Accused has committed murder of deceased Gul Muhammad therefore, he is convicted and sentenced accused Asghar Qazak U/S 265-H(ii) Cr.P.C with death sentence as Tazir U/S 302(b) PPC as no evidence fulfilling the requirement of Tazakiya-ul-Shahood brought on record. He be hanged by neck till he is dead. Accused is also directed to pay Rs.2,00,000/-as compensation U/S 544-A Cr.P.C to the legal heirs of deceased.”

5. The appellant has impugned the above said judgment by preferring instant appeal while learned trial Court has sought for confirmation of death by making a reference with this Court; those now are being disposed of through instant judgment.

6. At the very outset, it is contended by learned counsel for the appellant that the appellant is first offender and young man and death sentence is awarded to him on the basis of his own

confessional statement is too harsh, therefore, they would not press the disposal of instant appeal on merits if, the death sentence awarded to the appellant is converted and modified into Rigorous Imprisonment for Life by considering the mitigating circumstances of the case.

7. Learned A.P.G for the State has sought for dismissal of the instant appeal and confirmation of death sentence to the appellant by contending that the appellant has committed the offence in very clandestine manner.

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

9. Apparently, the appellant has been convicted and sentenced on the basis of his own confessional statement, which is appearing to be true and voluntarily, it has been recorded by the Magistrate who was having no concern either with the complainant party or with the appellant. In these circumstances 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.

10. However, the death sentence awarded to the appellant requires to be converted and modified for the reasons that the semen group on the cloth of the deceased and the appellant could not be determined due to hemolysis of red blood cells; none has seen

the appellant while committing the alleged incident and the appellant has been convicted on the basis of his own confessional statement, which too has been recorded on second day of his arrest. The death sentence awarded to the appellant is therefore, converted and modified with Rigorous Imprisonment for Life with compensation of rupees two lac payable to the legal heirs of the deceased and in case of default whereof the appellant would undergo Simple Imprisonment for six months for an offence punishable u/s 302(b) PPC. The conviction and sentence recorded against the appellant for offence punishable u/s 377 PPC would remain same. All the conviction and sentences awarded to the appellant would run concurrently, 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.