

IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD
Criminal Jail Appeal No.D-241 of 2011
{Confirmation Case No.13 of 2011}

Before;

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

Appellant: Faiz Muhammad S/o Rasool Bux @ Sodho
Through Syed M. Waseem Shah advocate

State: Mr. Shawak Rathore, DPG

Date of hearing: 26.11.2019

Date of decision: 26.11.2019

J U D G M E N T

The facts in brief necessary for passing the instant judgment are that the appellant with rest of two unknown culprits in furtherance of their common intention allegedly committed murder of Shah Jehan by causing him injuries with some hard blunt substance and sharp cutting weapon 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 PW-1 complainant Meer Muhammad at (Ex-4), he produced FIR of the present case. PW-2 Ali Asghar at (Ex-5). PW-3 Habibullah at (Ex-06). PW-4 Khan Muhammad at (Ex-7). PW-5 mashir Muhammad Saleem at (Ex-08), he produced memo of place of incident, memo of examination of dead body of the deceased and inquest report. PW-6 ASI Nizamuddin at (Ex-11), he produced his letter written to Medical Officer LUMHS Jamshoro,

receipt whereby he delivered the dead body of deceased to his relatives and memo of arrest of appellant and recovery. PW-7 SIP Niaz Ahmed at (Ex-12), he produced copy of FIR recorded u/s 13(d) Arms Ordinance. PW-8 Dr. Waqar Ahmed at (Ex-13), he produced postmortem report of the dead body. PW-9 ASI Ghulam Shabir Shah at (Ex-14), he produced memo of recovery of cloth of the deceased. PW-10 Allah Wassayo at (Ex-16), he produced memo of place of incident and memo of arrest of the appellant and recovery. PW-11 SIP Zulfiqar Ali at (Ex-18), he produced roznamcha entries. PW-12 Mr. Niaz Hussain the then Judicial Magistrate Kotri at (Ex-19), he produced confessional statement of the appellant and 164 Cr.PC statement of PW Habibullah and then learned DPP closed the side of the prosecution vide statement at (Ex-20).

3. The appellant in his statement recorded u/s 342 Cr.PC denied the prosecution allegation. 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 Jamshoro found the appellant guilty for the aforesaid offence, therefore, vide his judgment dated 29.07.2011 awarded the death penalty to the appellant together with the compensation of Rs.1,00,000/- payable to the legal heirs of the deceased and then made a reference to this Court for its confirmation, which now is

being disposed of alongwith the appeal of appellant which he has preferred before this Court, whereby he has impugned the death penalty before this Court, by way of instant judgment.

5. At the very outset, it is stated by learned counsel for the appellant that he would not press the disposal of instant appeal on merit, if the death sentence awarded to the appellant is modified with rigorous imprisonment by taking the mitigating circumstances of the case into prosecution.

6. Learned D.P.G for the State has readily accepted the suggestion of the learned counsel for the appellant.

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

8. Apparently, the appellant has been convicted and sentenced on the basis of his own confessional statement, which he has made before the Magistrate having jurisdiction, same is appearing to be true and voluntarily. On arrest from the appellant has also been secured the dagger which he has allegedly used in commission of the incident. 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.

9. However, the death sentence awarded to the appellant needs to be modified for the reason that the FIR of the incident has

been lodged with delay of about one day; none indeed has seen the appellant committing the alleged incident; the appellant hardly was having a motive to commit the alleged incident and confession statement of the appellant has been recorded on next date of his arrest. Therefore, the death sentence awarded to the appellant is modified 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 six months for an offence punishable u/s 302(b) PPC, 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

Sajjad Ali Jessar