

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD
Criminal Jail Appeal No.D- 52 of 2009
Cr. Revision Appln.No.D-54 of 2009**

Before;

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

Criminal Jail Appeal No.D- 52 of 2009

Appellant: Qaim Muhammad son of Muhammad
Hingorjo,
Through Mr. Mehmood Alam Abbasi,
Advocate

Complainant: Through Mir Naeem Talpur, Advocate.

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

Criminal Rev.Appln. No.D- 54 of 2009

Applicant/complainant: Allah Bux son of Haji Ahmed,
Through Mir Naeem Talpur, Advocate.

Respondent: Through Mr. Mehmood Alam Abbasi,
Advocate

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

Date of hearing: 17.12.2019

Date of decision: 17.12.2019

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 as per prosecution has allegedly committed Qatl-e-Amd of Abdul Jabbar by causing him hatchet injuries, for that he was booked and reported upon by the police.

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

3. The appellant in his statement recorded u/s 342 Cr.PC in first instance denied the prosecution allegation, but subsequently admitted to have committed the murder of deceased Abdul Jabbar by suspecting him to be have illicit relation with his wife Mst. Zeenat. He also admitted to have made confessional statement before learned 1st Judicial Magistrate Mithi. However, he did not examine anyone in his defence or himself on Oath.

4. On conclusion of the trial, the learned Sessions Judge, Tharparkar at Mithi found the appellant to be guilty for the above said offence and then convicted and sentenced him to undergo Rigorous Imprisonment for life and to pay fine of Rs.50,000/-and in case of default in payment of fine to undergo Simple Imprisonment for six months with benefit of section 382(b) Cr.P.C vide his judgment dated 03.04.2009, which is impugned by the appellant before this Court by way of instant appeal. Simultaneously, the complainant has also filed a Criminal Revision Application for enhancement of conviction and sentence recorded against the appellant, which now are being disposed of through instant judgment.

5. It is contended by the learned counsel for the appellant that appellant being innocent has been involved in this case falsely by

the complainant party in order to satisfy its matrimonial dispute with him; the FIR has been lodged with un-plausible delay of about six hours; it was night time incident, therefore, the identity of the appellant is doubtful; the recovery of hatchet has been made from the appellant on next date of his arrest in a suspected manner; the confessional statement of the appellant has been recorded on 6th day of his arrest after putting him under duress and the evidence which has been brought on record by the prosecution has been believed by learned trial Court without lawful justification. By contending so, he sought for acquittal of the appellant.

6. Learned A.P.G for the State and learned counsel for the complainant by opposing the acquittal of the appellant have prayed for enhancement of his conviction by contending that the prosecution has been able to prove its case against him beyond shadow of doubt, which is supported by his confessional statement.

7. Learned counsel for the appellant, however, has opposed to enhancement of the conviction and sentence of the appellant by contending that it would be too harsh. In support of his contention he has relied upon case of ***Zahoor Ahmed versus The State (2013 SCMR 1618)***.

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

9. The death of the deceased being un-natural is not denied even by the appellant. Only dispute with the appellant is that he has been involved in this case falsely by the complainant party. In order to prove the charge against the appellant the prosecution has examined complainant Allah Bux, PWs Amanullah and Muhammad. It has been stated by them that on 14.09.2006, when they were sleeping in their house, they woke up on some voice and found the appellant causing hatchet blows to the deceased and then went away. They took the deceased to Civil Hospital at Mithi. There he died and then they reported the incident to police. Despite lengthy cross examination they have stood by their version, on all material points. In that situation, it would be hard to disbelieve them only for the reason they are related interse. On arrest, from the appellant has been secured incriminating hatchet by investigating officer SIO / SIP Hameerji. On examination, it was found to be stained with human blood. Subsequently, the appellant has also made his confessional statement admitting to have committed death of the deceased, which was recorded by Mr. Farhad Baig Dahar, the then Judicial Magistrate at Mithi. In that situation, learned trial Court has rightly found the appellant to be guilty for the above offence and has convicted and sentenced him accordingly, which is not calling for any interference by this Court by way of instant appeal.

10. However, no case for enhancement of conviction and sentence to the appellant is made out, simply for the reason that the prosecution has not been able to prove the motive of the incident.

11. In case of ***Nadeem Zaman vs The State (2018 SCMR 149)***

On account of failure of prosecution to prove the motive the Hon'ble apex Court has reduced the death sentence to life while making the following observation;

“---S. 302(b)--- Qatl-i-amd--- Reappraisal of evidence--- Sentence, reduction in---Mitigating circumstances---Motive not proved---Motive set up by the prosecution was that the accused killed the deceased as he suspected her to have caste magic on his sister because of which she became mentally ill---Said motive had not been established by the prosecution---Even the investigating officer of the case had failed to collect any material in support of the asserted motive---Lady who had statedly fallen mentally ill because of application of magic on her by the deceased had not even been examined by the investigating agency nor any investigation had been conducted in such regard---Motive asserted by the prosecution had, thus, remained far from being proved---During the investigation a dagger had allegedly been recovered from the custody of the accused but it was admitted that the recovered dagger was not stained with blood and, hence, the same did not stand connected with the alleged murder---In the absence of proof of the asserted motive the real cause of occurrence had remained shrouded in mystery and thus caution was to be exercised in the matter of the sentence of death awarded to accused---Sentence of death awarded to accused was reduced to imprisonment for life in circumstances---Appeal was disposed of accordingly.”

12. Again, in case of ***Muhammad Akram alias Akri (2019 SCMR 610)***, when the motive was not proved, the death sentence was modified into imprisonment for life by Hon'ble Supreme Court of Pakistan by making following observation;

“----S. 302(b)--- Qatl-i-amd--- Reappraisal of evidence--- Sentence, reduction in---Death sentence reduced to imprisonment for life--- Motive not proved---Specific motive was set out by the complainant in the FIR and in his statement recorded before the Trial Court by claiming that four days prior to the occurrence, accused along with his vagabond friends had come and stood in front of the house of the complainant, and the deceased had reprimanded the accused, whereupon an altercation took place between the two; that the accused had allegedly threatened the deceased of dire consequences and on account of such grudge, the accused committed the crime---In his cross-examination, the complainant admitted that he had never reported to police that accused along with his vagabond friends used to come and stand in front of their house---Nothing was available on record to prove that the incidence of altercation between accused and deceased was ever reported to police---Complainant also did not disclose the names of vagabond friends of the accused who used to come and stand in front of the house of the complainant---Real cause of the occurrence had not been disclosed by either of the sides---In such circumstances, the motive set out by the prosecution remained far from being proved--- Prosecution's failure to prove the motive set out by it certainly benefited the accused---Conviction of the accused under S. 302(b), P.P.C. was maintained but his sentence of death was converted into imprisonment for life”.

13. In case of ***Ghulam Mohiuddin alias Haji Babu & ors Vs. The State (2014 SCMR-1034)***, the death sentence was modified by Hon'ble apex Court by making observation 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”.

14. The captioned Appeal and Revision Application are disposed of in above terms.

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