

JUDGMENT SHEET
IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD.

Cr.Appeal.No.D- 209 of 2006

Present:-
Mr. Justice Naimatullah Phulpoto.
Mr. Justice Zulfiqar Ahmed Khan.

Date of hearing: 07.04.2017.
Date of judgment: 21.04.2017.

Appellant Qadir s/o Muhammad
Ismail Arain

Through Syed Tarique Ahmed Shah,
Advocate.

The State:

Through Syed Meeral Shah, D.P.G.
alongwith Muhammad Aslam Jamali
SHO PS Digri.

J U D G M E N T

NAIMATULLAH PHULPOTO, J: Appellant Qadir was tried alongwith co-accused Muhammad Iqbal by the learned 2nd Additional Sessions Judge Mirpurkhas for offence u/s 302, 34 PPC. By judgment dated 23.09.2006 co-accused Muhammad Iqbal was acquitted of the charge. However, appellant Qadir was convicted u/s 302(b) PPC and sentenced to imprisonment for life. However, no orders regarding compensation as required u/s 544-A Cr.P.C. were passed by the trial court.

2. Brief facts of the prosecution case as disclosed in the FIR are that on 06.08.1998 at 2215 hours complainant Abdul Rasheed lodged his report alleging therein that they are four brothers. The names of three brothers are Nadeem, Anwar Adil (now deceased) and Muhammad Saleem. It is stated that complainant and Anwar Adil were watch makers and used to work in the same shop. About five months prior to this incident, it is alleged that Muhammad Saleem contracted love marriage with Mst. Farheen Iqbal. Thereafter, Iqbal lodged FIR bearing Crime No.14/1998 against Muhammad Saleem and Anwar Adil u/s 16 offence against Zina (Enforcement of Hudood Ordinance), 1979 at PS Digri. Over such matrimonial dispute, it is alleged that Iqbal and his relative Qadir (present accused) became on inimical terms with the complainant party. It is further alleged that on 06.08.1998 complainant and his brother Anwar Adil after closing the shop left for their house through Shahi Bazar. On their way, Anwar Adil went to the shop of Abdul Shakoor for purchasing ice cream. The electricity was on at that time and one Yameen son of Ibrahim Qureshi was also standing there. At 2125 hours, it is alleged that accused Qadir s/o Ismail armed with pistol and Iqbal s/o Bashir Arain emerged in the street. It is alleged that accused Qadir directly fired from his country pistol at Anwer Adil with intention to kill him and fire hit him and he fell down. PWs raised cries and the accused ran away. Complainant and other persons saw that Anwer Adil was bleeding and he went unconscious. Thereafter, injured was brought to the hospital where he succumbed to the injuries. Complainant went to the Police Station and lodged his FIR against the accused Qadir and Iqbal. It was recorded vide crime No.98/1998 for offence u/s 302, 34 PPC.

3. During investigation, place of wardat was visited by the Investigation Officer in presence of mashirs, postmortem examination of the deceased was

conducted, 161 Cr.P.C. statements of the PWs were recorded. Accused Muhammad Iqbal was arrested on 02.09.1998 and on the conclusion of investigation challan was submitted against the accused Muhammad Iqbal and Qadir was shown as absconder. Case was sent up to the court of Sessions Mirpurkhas. Accused Qadir was declared as proclaimed offender.

4. Charge was framed against accused Iqbal on 02.03.1999 at Ex.11 u/s 302(a), 34 PPC. During trial accused Qadir surrendered himself before the trial court on 18.08.2000. Amended charge was framed on 27.08.2001 at Ex.16 to which both the accused pleaded not guilty and claimed to be tried.

5. In order to prove its' case, the prosecution examined PW Abdul Rasheed at Ex.18 who has produced FIR at Ex.18/A. PW-2 Muhammad Yamin at Ex.19. PW-3 Muhammad Saleem at Ex.20. He produced the memo of inspection of dead body at Ex.20/A, memo of place of vardat at Ex.20/B, sketch of the place of incident at Ex.20/C, memo of recovery of clothes of deceased at Ex.20/D, mashirnama of arrest of accused Muhammad Iqbal at Ex.20/E and mashirnama of securing the diary and documents at Ex.20/F. PW-4 Dr. Muhammad Akram at Ex.22 who produced the postmortem report of deceased at Ex.22/A. PW-5 ASI Azeem at Ex.23. PW-6 Sarang at Ex.24. PW-7 SIP/SHO Ghulam Nabi at Ex.26 who produced Danishtnama at Ex.26/A, Inquest report at Ex.26/B and report of chemical examiner at Ex.26/G. Thereafter, the learned D.D.A. closed the side of prosecution vide statement at Ex.27.

6. The statements of accused were recorded u/s 342 Cr.P.C. in which both the accused denied the prosecution allegations and claimed their innocence. Accused Qadir has raised plea that he had enmity with police as he had also filed Direct Complaint and suit against police. He had produced photocopy of judgment of Direct Complaint filed by him against some police

officials. Accused Iqbal has stated that he has been falsely implicated in this case due to enmity with the complainant party as he had lodged FIR against PW Saleem & others for abduction of his daughter. As such he has been implicated in this case falsely. Both accused did not examine themselves on Oath in disproof of prosecution allegations. However, accused Qadir examined 10 DWs in defence namely Ghulam Rasool at Ex.32, Serwar at Ex.33, Jamshed Iqbal at Ex.34, Muhammad Siddique at Ex.35, Abdul Karim at Ex.36, Imran at Ex.37, Muhammad Akram at Ex.38, Abdul Sami Leghari at Ex.39, Ubedullah Anwar at Ex.40 and Dildar at Ex.41. Thereafter, learned counsel for accused Qadir closed the side vide Ex.42.

7. After hearing the learned counsel for the parties and assessment of evidence trial court convicted accused Qadir u/s 302(b) PPC and sentenced to imprisonment for life. However, accused Iqbal was acquitted of the charge by the learned trial Court on the same set of evidence.

8. Syed Tarique Ahmed Shah, learned counsel for the appellant did not press the appeal on merits and stated that the appellant is in continuous detention / custody since 18.08.2000 and he is supporter of a large family as such his sentence of imprisonment for life may be reduced to one already undergone. In support of his contention, reliance is placed upon the case of Gamoon & others v. The State (SBLR 2012 Sindh 679).

9. Syed Meeral Shah, learned D.P.G. argued that the prosecution had proved its' case against the appellant. As regard to contention of the learned counsel for the appellant that the sentence of imprisonment for life may be reduced to already undergone, Syed Meeral Shah, learned D.P.G. submitted that the appellant is in custody since 18.08.2000, according to jail roll dated 03.04.2017, appellant has served the sentence of 15 years, 08 months and 20 days and earned remissions of 05 years, 08 months and 15 days. As such

learned D.P.G. recorded no objection in case the sentence of imprisonment for life is reduced to already undergone. However, learned D.P.G. pointed out that in case u/s 302(b) PPC the compensation is mandatory but the same has not been awarded by the trial court vide judgment dated 23.09.2006.

10. From the close scrutiny of the judgment dated 23.09.2006, it transpires that appellant Qadir has been convicted u/s 302(b) PPC and sentenced to imprisonment for life but compensation has not been ordered which is mandatory u/s 544-A Cr.P.C. Operative part of the judgment of trial court is reproduced as under:-

“In view of my findings on the above points, it appears that the prosecution has succeeded to establish its case against accused Qadir regarding commission of the murder of deceased Anwar Adil therefore, accused Qadir is convicted under S. 265-H(2) Cr.P.C, and is sentenced to suffer imprisonment for life under S.302(B), PPC. However he is given benefit of S.382-B, Cr.P.C. So far the case against the co-accused Iqbal is concerned, since the prosecution has failed to establish its case against him beyond the shadow of reasonable doubt, therefore, accused Iqbal is acquitted under S.265-H(1) Cr.P.C, on the benefit of doubt. Accused Qadir is produced in custody and remanded back to Central Prison, Hyderabad to serve out the above sentence, while accused Iqbal is present on bail, his bail stands cancelled and surety discharged.”

Honourable Supreme Court of Pakistan in the case of Khalid and others

v. The State (1975 SCMR 500) has held as under:-

“The trial Court and the High Court, however, overlooked the provisions of section 544-A of the Criminal Procedure Code which as recently pointed out by this Court are mandatory. Accordingly, we in addition to the life sentence imposed on Khalid, also impose a fine of Rs.1,000 or in default of payment of fine to one year’s rigorous imprisonment. In the event of the recovery of the fine, the same shall be paid to the heirs of the deceased.”

11. In view of the above legal position, it is clear that trial court overlooked the mandatory provisions of Section 544-A Cr.P.C. As regards to main submission of learned advocate for the appellant that sentence of

imprisonment for life may be reduced to already undergone, as per case diary of the trial court dated 18.08.2000 accused Qadir surrendered before the trial court on 18.08.2000. As per jail roll of the appellant Qadir Bux dated 03.04.2017, the appellant has served the sentence of 15 years, 08 months and 20 days and earned remissions of 05 years, 08 months and 15 days and unexpired portion of his sentence is 03 years, 06 months and 75 days. According to judgment of the trial court dated 23.09.2006, he has been convicted u/s 302(b) PPC and sentenced to suffer imprisonment for life. Appeal is not pressed on merits. Prosecution had proved its' case against the appellant. Witnesses had withstood test of cross examination, no discrepancy or omission has been brought on record. Judgment of trial Court is based upon sound reasons. According to Rule 140 of Pakistan Prison Rules 1978, it is clear that imprisonment for life means twenty five years rigorous imprisonment and every lifer prisoner shall undergo a minimum of fifteen years substantive imprisonment. For the convenience, Rule 140 of Pakistan Prison Rules 1978 is reproduced as under:-

“Rule 140---(i) Imprisonment for life will mean twenty-five years; rigorous imprisonment and every lifer prisoner shall undergo a minimum of fifteen years substantive imprisonment.

(ii) The case of all prisoners sentenced to imprisonment for life shall be referred to Government, through the Inspector General, after they have served fifteen years substantive imprisonment for consideration with reference to section 401 of the Code of Criminal Procedure.

(iii) The cases of all prisoners sentenced to cumulative periods of imprisonment aggregating twenty-five years or more shall be submitted to Government, through the Inspector General, when they have served fifteen years substantive sentence for orders of the Government.”

Therefore, in our considered view the sentence already undergone by appellant/accused would meet the ends of justice. Moreover appellant is supporter of a large family. In this view of matter, conviction recorded by the trial court is maintained. However the sentence of imprisonment for life is

reduced to one already undergone. The appellant shall be released forthwith if he is not required in some other case. However, subject to payment of compensation of Rs.3,00,000/- (Rupees three lac only) to the legal heirs of the deceased as required u/s 544-A Cr.P.C. In case of default in payment, the appellant shall undergo further 06 months SI.

Appeal is disposed of in above terms.

JUDGE

JUDGE

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