

**IN THE HIGH COURT OF SINDH,  
CIRCUIT COURT, HYDERABAD.**

Cr.Jail.Appeal.No.D- 04 of 2009  
Confirmation Case No. 01 of 2009

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

Date of hearing: 10.04.2017.  
Date of judgment: 20.04.2017.

Appellant Mehboob s/o Qadir Bux Burriro. Through Mr. Javed Ashraf Leghari, Advocate.

The State: Through Syed Meeral Shah, D.P.G.

**J U D G M E N T**

***NAIMATULLAH PHULPOTO, J:*** Appellant Mehboob s/o Qadir Bux Burriro was tried by the learned Judge Anti-Terrorism Court Hyderabad Division at Hyderabad for offences u/s 365-A, 302, 201 PPC r/w Section 6(2)(a) of ATA 1997. By judgment dated 16.01.2009, appellant Mehboob was convicted u/s 365-A, 302 (b) PPC r/w Section 6(2)(a)(b) / 7 of ATA 1997 and sentenced to death on each count. The property of accused was also made liable to forfeiture. No order regarding compensation as provided u/s 544-A Cr.P.C. was passed on the ground that the appellant was a poor person. Appellant was also convicted u/s 201 PPC and sentenced to 07 years RI and

to pay the fine of Rs.30,000/- In case of default in payment of fine, he was ordered to suffer RI for three months more. The learned trial Court made Reference to this court for confirmation of death sentence as required u/s 374 Cr.P.C. By this single judgment, we intend to decide appeal as well as confirmation Reference made by the trial court.

2. Brief facts of the prosecution case as disclosed in the FIR are that on 12.02.2008 at 1200 hours FIR was lodged against the accused regarding kidnapping for ransom and murder of a minor boy Kamran Ali Shah aged about 07 years, at PS Bhit Shah for offences U/Ss 302, 364-A, 365-A PPC, alleging therein that on 23.01.2008 boy Kamran Ali had gone out of his house for playing at 1700 hours. It is alleged that boy did not return home. Complainant Moshin Raza Shah made search for his son, but there was no clue of the child. On 12.02.2008, complainant reported the matter to the police regarding the disappearance of his son. News regarding the missing of the child were also published. On 29.01.2008, it is alleged that complainant received a call from Cell No.0308-3925384. Caller demanded ransom from the complainant for release of his son. Complainant suspected the voice of caller to be of present appellant who was residing in the same Mohalla. Complainant asked the caller as to how he would be sure that the child was in his custody. Upon which it is alleged that the caller asked the complainant that he would throw clothes of his abducted son in street to which complainant agreed. It is further stated in the FIR that on the next day, complainant received another call from the same cell number and complainant was informed that clothes of his child were lying near his house in the street. It is alleged that caller demanded Rs. 6,00,000/- as ransom from the complainant for release of his son. Complainant expressed his inability to pay such huge amount. Thereafter, complainant narrated this fact to Ali Dino Shah and Haji Dolat Ali Shah and went to the street along with them where complainant

found clothes of his abducted son in the street. Complainant then tried to contact the caller at his cell number but his cell was switched off. It is alleged that same person/caller contacted the complainant on his cell number again and repeated demand of ransom. Complainant being a poor person offered Rs. 30,000/35,000 for release of his son. Accused reduced his demand of ransom to Rs. 30,000/- and asked the complainant to reach at Allah Wala Chowk and then to Tambora chowk on the next day and finally in the street in front of Alam Pak Shah Latif but accused did not appear at the given places due to fear. It is stated that accused again called on 12.02.2008 and asked the complainant to meet him in the premises of mosque and instructed the complainant that as soon as he would flash the torch light, complainant will have to pass ransom amount through grill of the mosque to him. Complainant went to the pointed place at 12.00 mid night and waited for accused near Wazukhana of the Masjid. Thereafter, it stated that torch light was flashed. Complainant identified accused, he was Mehboob Burriro, who had demanded ransom for the release of his son. Complainant insisted the accused first to release his son. Since the child was not available with the culprit, complainant did not pass the amount of ransom to him and accused ran away to his house. Thereafter, complainant called his relatives and encircled the house of accused. Accused came out from the house when he was caught hold by the complainant party. Accused was inquired about the missing boy Kamran Ali. Accused admitted before the complainant party that he had kidnapped Kamran from the street and he had murdered the child and buried his body in sand dunes near bypass. It is alleged that accused led the complainant party to place of burial, from where dead body of a minor boy was recovered. Complainant while leaving the PWs over the dead body went to P.S. Bhitai Shah on 12.02.2008 and lodged FIR against the accused and

his two brothers. It was recorded vide crime No. 5/2008 for offence u/s 302, 364-A and 365-A PPC.

3. During investigation, Investigation Officer visited the place of Wardat, recovered clothes of deceased and prepared Mashirnama and inquest report. Dead body was sent to the hospital for postmortem examination and report. Statements of PWs were recorded u/s 161 Cr.P.C. Accused Mehboob was arrested on 12.02.2008. He was prepared to make confession before Magistrate thus he was produced before the Judicial Magistrate, Hala for recording his confessional statement. On the conclusion of usual investigation challan was submitted against the accused for offences u/s 365-A, 302, 201 PPC r/w Section 6/7 of ATA 1997. Names of co-accused Punhal and Darban were placed in Column No.2 of the final report for want of evidence.

4. Trial Court framed the charge against accused Mehboob u/s 365-A, 302, 201 PPC and Section 6(2) (a) of ATA, 1997 at Exh 4. Accused pleaded guilty to the charge.

5. At the trial, prosecution examined complainant Syed Mohsin Raza at Ex.7 who produced FIR at Ex7/A, PW-2 Ali Dino Shah at Ex.08, PW-3 Mr. Zulfiqar Ali Memon Civil Judge and Judicial Magistrate Hala at Ex.9 who produced confessional statement of accused at Ex.9-A, PW Mashooque Ali Shah at Ex.10, who produced the mashirnama of arrest of accused at Ex.10-A, mashirnama of place of incident at Ex.10-C, mashirnama of recovery of clothes of deceased at Ex.10-D and inquest report at Ex.10-E, PW-5 Dr. Nazir Ahmed at Ex.11, who produced the postmortem examination report at Ex.11/A and PW-6 ASI Muhib Ali at Ex.12. Thereafter, prosecution side was closed vide statement at Ex.13.

6. The statement of accused was recorded u/s 342 Cr.P.C at Ex.14. Accused admitted all the incriminating pieces of evidence brought against him on record and examined himself on oath, in which he admitted that he had kidnapped boy for ransom and killed him.

7. Trial Court after hearing the learned advocate for accused, learned SPP for the state and on assessment of evidence, convicted and sentenced the appellant to death as stated above. Hence, this Criminal Jail Appeal was filed. Trial Court made Reference for confirmation of death sentence.

8. We have carefully heard Mr. Jawed Ashraf Leghari learned advocate for appellant Syed Meeral Shah learned D.P.G for the state and scanned the entire evidence.

9. As regards to the un-natural death of deceased Kamran, prosecution has examined Dr. Nazir Ahmed who had conducted postmortem examination of deceased. M.O has deposed that on 12-02-2008, he was posted as Medical Officer, Rural Health Centre Bhit Shah. On the same day, at 12:00 noon a dead body of a boy aged about 7 years was brought by Bhit Shah Police for postmortem examination and report. The dead body was identified by one Mohsin Raza Shah, the father of the deceased. He started postmortem examination at 1-10 P.M and finished at 2-40 P.M. Rigor Mortis were present. Dead body was without clothes. Dead body was not identifiable because of loss of facial features. There was fracture of cervical vertebra. The cause of death was acute respiratory failure. M.O. issued such postmortem report and produced at Ex-11/A. Evidence of the Medical Officer goes unchallenged and un-rebutted in cross examination.

We have no hesitation to hold that cause of death of minor boy Kamran was acute respiratory failure as described by the Medical Officer.

10. The fact of the case as well as evidence produced before the trial Court find elaborate mention in the Judgment passed by the trial Court dated 16.01.2009 and therefore same may not be reproduced here so as to avoid duplication and unnecessary repetition.

11. Even at cost of repetition it would be worthwhile to mention here that charge was framed against accused Mehboob by trial court on 18.04.2008 at Ex.4. Accused pleaded guilty in the following words:-

***“I had murdered the son of Mohsin Raza Shah and had buried him in sand dunes. I had kidnapped him for ransom. I had made such confessional statement before J.M. Hala. I plead guilty and want to make a confessional statement before this court also.”***

12. As burden is always upon the prosecution to prove its' case. Trial Court recorded evidence of prosecution witnesses. Complainant Mohsin Raza, the father of deceased boy was examined by the prosecution at Exh-07. He has deposed that his son went out of the house on 23.01.2008 and disappeared. Present accused called the complainant at his mobile and demanded ransom. For want of ransom, his son was murdered by the present accused. Thereafter, present accused led the complainant party to the sand dunes and produced dead body of his son. Evidence of the complainant goes unchallenged and un-rebutted on all material particulars of the case. PW-4 Mashooq Ali Shah fully supported the case of prosecution. Mr. Zulfiqar Ali Civil Judge Matiari has deposed that on 25.02.2008 Police of PS Bhit Shah produced before him accused for recording his confessional statement. After observing the legal formalities and providing the sufficient time to accused for reflection, he recorded the confessional statement of accused, in which he admitted guilt that he had kidnapped the boy for ransom and killed him.

13. ASI Muhib Ali conducted the investigation in this case and he has deposed that accused was arrested on 12.02.2008 and during interrogation the present accused got prepared to make confession before the Magistrate. He produced him before the Civil Judge & Judicial Magistrate, Hala on 25.02.2008, for recording his confessional statement and it was recorded. After recording of the confessional statement, accused was remanded to the judicial custody. I.O. completed investigation and submitted challan against the present accused.

14. Statement of accused was recorded by the trial court u/s 342 Cr.P.C. at Ex.14. Accused Mehboob admitted that on 23.01.2008 at 5-00 p.m he had kidnapped boy Kamran Shah s/o Mohsin Raza Shah for ransom. Accused admitted that he did not receive the ransom of Rs.600,000/- from the complainant and he committed the murder of boy Kamran by way of strangulation. He admitted that after killing the boy, he buried the dead body in sand dunes. It has also been admitted by the accused that he had thrown clothes of the minor boy in the street in order to show the complainant that boy was in his custody. Accused admitted that on 25.02.2008 he voluntarily made confessional statement before Civil Judge & Judicial Magistrate, Hala regarding kidnapping the minor for ransom and intentionally caused death of the boy. All the other pieces of evidence have also been admitted by the accused. Accused examined himself on Oath as provided u/s 340(2) Cr.P.C. in which he admitted that he had kidnapped Kamran at about 5/6 p.m for ransom and then strangled the child, who died within 10/15 minutes; whereafter he wrapped his body in rilly and put it into gunny bag and buried. Accused further stated that he had demanded ransom from the complainant for release of boy but it was not paid. Accused voluntarily made confession before the Magistrate and gave details of the incident.

15. Learned trial court after assessment of evidence came to the conclusion that present accused had kidnapped minor boy for ransom and committed his murder. Learned Judge ATC convicted accused and sentenced to death on each count as stated above.

16. Learned advocate for appellant did not press the appeal on merits and argued that the appellant is in continuous detention / custody since the date of his arrest viz. 12.02.2008, his sentence of death may be reduced to imprisonment for life. Secondly, it is argued that accused was of unsound mind, no proper legal assistance was provided to him during the trial. In support his contentions, learned advocate for appellant has relied upon the case of Sarwar Khan v. The State reported in 2000 P.Cr.L.J. 779.

17. Syed Meeral Shah, learned D.P.G. argued that there is admission of accused that he has committed Qatl-e-Amd of a minor boy aged about 7/8 years and this is not a fit case for reduction of death sentence to imprisonment for life. Learned D.P.G further argued that accused kidnapped minor boy for ransom and to avoid the risk of capture, brutally murdered him for ransom. Learned D.P.G. submitted that accused has been sentenced to death, as such conviction u/s 201 PPC is not sustainable under law. We agree with learned D.P.G. that conviction of accused u/s 201 PPC was erroneous when accused has been sentenced to death. As regards to contention of learned advocate for appellant that accused is in continuous detention since 12.02.2008, it is replied by D.P.G. that custody of 09 years is no valid ground to covert the death sentence into imprisonment for life. Learned D.P.G. has argued that the appellant was not of unsound mind but is a hardened criminal. Learned D.P.G. also opposed the instant appeal.

18. From the close scrutiny of evidence, we have come to the conclusion that the prosecution has proved its' case against the appellant for the reasons



that accused pleaded guilty to the charge and the trial court for its' satisfaction recorded the prosecution evidence. Complainant Mohsin Raza Shah has given the entire episode of the incident and stated that his son went out of the house on 23.01.2008 but did not return back. On 29.01.2008, he received call from cell No.0308-3925384. Caller demanded Rs.600,000/- for the release of his son. Caller agreed to receive Rs.30,000/35.000/- Caller asked the complainant to bring amount at Allah Wala Chowk. Complainant alongwith Haji Daulat Shah and Ali Dino Shah went to the pointed place but accused did not reach there due to fear. Complainant has deposed that accused had thrown clothes of minor boy in the street to satisfy him that his child was with him. On 12.02.2008, again accused called the complainant to reach at Wazu Khana of Masjid. Complainant alongwith his brothers Haji Daulat Shah and Ali Dino Shah went at Wazu Khana of Masjid. Accused demanded cash from the complainant through grill. Complainant asked him to show the child first. Upon which accused stated that child will be handed over to him. Accused was identified by complainant. Thereafter, complainant went to the house of accused alongwith PWs where accused admitted that he had committed the murder of his child and buried him in sand dunes. Dead body buried by the accused in sand dunes was produced by him. FIR of incident was lodged on 12.02.2008. Complainant was cross examined by learned advocate for accused but nothing favourable to accused came on record in the cross examination. PW Ali Dino Shah at Ex.8 had fully supported the case of prosecution. His evidence remained un-shaken during cross examination by defence counsel. PW Mr. Zulfiqar Ali, the then Civil Judge & Judicial Magistrate, Hala had recorded the confession of accused on 25.02.2008 and stated that after observing all legal formalities, he had recorded the confession of accused. We have no reason to disbelieve it and it was true and voluntarily. In the statement of accused recorded u/s 342 Cr.P.C, all the

incriminating pieces of evidence were put to the accused for his explanation / reply, he admitted the same to be true and correct. Accused examined himself on Oath in which he has also admitted the case of prosecution. We have come to the conclusion that prosecution succeeded to prove that appellant had committed offence of kidnapping for ransom of a minor boy Kamran and committed his murder. Chain of circumstances and admission of accused, led to his guilt. Trial Court has rightly appreciated the evidence according to settled principles of law.

19. As regards to the contention of learned advocate for appellant that the appellant was of unsound mind and incapable of making his defence, it may be observed here that such plea was neither raised before the Investigation Officer nor at trial. Even before this court, at the time of arguments no request has been made for referring the appellant for his medical examination. In our opinion, accused is a hardened criminal therefore, plea raised by learned advocate for appellant appears to be an after thought and the same is not accepted. Last contention of learned advocate for the appellant was that accused is in continuous detention / custody since 12.02.2008, as per jail roll dated 05.04.2017, issued by the Superintendent Central Prison, Hyderabad accused has served the sentence of 09 years 01 month and 23 days upto 05.04.2017. To us the said 09 years' period in custody in the case of death sentence is far less than that of term of imprisonment for life. Therefore, principle of expectancy of life is not attracted in this case.

20. We have given our anxious consideration for determination of quantum of sentence to be awarded to the appellant in the present case in which a boy of 7/8 years has been murdered for ransom. We are guided by the dictum laid down by Honourable Supreme of Pakistan in the case of HAMID MAHMOOD

& another v. State (PLJ 2013 SC 772) on the point of quantum of sentence. It is held as under:-

**“20. In the instant case, the accused were involved in a brutal murder of a young boy who had been kidnapped by them for ransom. The accused persons were well known to the abductee, hence apparently the accused had no intention of ever releasing the abductee on the receipt of ransom to avoid the risk of identification and capture. A heinous crime has been committed, which is a factor to be taken into consideration for determination of the sentence to be awarded and in the cases of brutal premeditated murder of a young child, death sentence appears to be appropriate, as has been held by this Court in the case, reported as *Talib Hussain v. The State* )1995 SCMR 1538). In the said case on account of the murder of a young boy, the sentence of life imprisonment was enhanced to sentence of death.”**

21. In the case of Hamid Mehmood and others v. The State (2013 SCMR 1314), in the case of kidnapping for ransom of minor followed by murder, the Honorable Supreme Court of Pakistan held as under:-

***“25. In the facts and circumstances of the case, the considerations pertaining to quantum of sentence, have been examined. The reasons for the award of the death penalty far out weight the considerations for the award of lesser sentence. The tender age of the minor, the brutal and heinous nature of the crime and pre-meditation persuades us to agree with the sentence awarded by the learned trial Court as well as the learned High Court. The deterrent aspect of the sentence cannot be lost sight of either as it was a crime of kidnapping for ransom of minor, followed by murder. In such an eventuality, the normal sentence of death should be awarded and the Court should neither hesitate nor search for laboured pretexts to award a lesser sentence, as has been held by this Court, in the case, reported as *Muhammad Sharif (Supra)*.”***

22. The upshot of above mentioned discussion is that no benefit can be extended in favour of appellant on the ground of custody in Jail for 09 years. It does not constitute a mitigating circumstance in this case. According to prosecution evidence, appellant kidnapped a boy for ransom and committed murder. Hence, appellant does not deserve any leniency in sentence. Trial Court has examined each and every piece of evidence carefully and appreciated evidence according to settled principles of law.

23. Death sentence in a murder case is a normal penalty and the Courts while diverting towards lesser sentence should have to give detailed reasons as held by Honourable Supreme Court of Pakistan in the case of DADULLAH and others versus THE STATE (2015 SCMR 856). Relevant portion is reproduced as under:-

***“Death sentence in a murder case is a normal penalty and the Court while diverting towards lesser sentence should have to give detailed reasons. The appellants have committed the murder of two innocent citizens and also looted the bank in a wanton, cruel and callous manner. Now a days the crime in the society has reached an alarming situation and the mental propensity towards the commission of the crime with impunity is increasing. Sense of fear in the mind of a criminal before embarking upon its commission could only be inculcated when he is certain of its punishment provided by law and it is only then that the purpose and object of punishment could be assiduously achieved. If a Court of law at any stage relaxes its grip, the hardened criminal would take the society on the same page, allowing the habitual recidivist to run away scot-free or with punishment not commensurate with the proposition of crime, brining the administration of criminal justice to ridicule and contempt. Courts could not sacrifice such deterrence and retribution in the name of mercy and expediency. Sparing the accused with death sentence is causing a grave miscarriage of justice and in order to restore its supremacy, sentence of death should be imposed on the culprits where the case has been proved.”***

24. For the above stated reasons no occasion has been found by us for reducing the appellant’s sentence from death to imprisonment for life.

25. As a sequel to the discussion made above, we find no reason whatsoever to interfere in the conclusion arrived at by the trial court in conviction and death sentence awarded to the appellant. Consequently, appeal is **dismissed** and Reference for confirmation of death sentence is answered in **affirmative**.

JUDGE

JUDGE

Tufail

