

IN THE HIGH COURT OF SINDH, KARACHI

Special Criminal Anti-Terrorism Appeal No. 91 and 92 of 2019

Before:

Mr. Justice Mohammad Karim Khan Agha
Mr. Justice Khadim Hussain Tunio

Appellants: Muhammad Ishtiaque son of Muhammad Hussain in Spl. ATA No. 91/2019 and Syed Abu Irfan son of Syed Abu Asad in Spl. ATA No. 92/2019 through Mr. Amir Mansoob Qureshi, advocate.

Respondent: The State through Mr. Abrar Ali Khichi, Additional Prosecutor-General, Sindh.

Date of hearing: 10.03.2022
Date of announcement: 17.03.2022

J U D G M E N T

KHADIM HUSSAIN TUNIO, J- Through captioned appeals, the appellants have challenged the judgment dated 03.04.2019 (*impugned judgment*), passed by the Anti-Terrorism Court-XII Karachi in Special Case No. 100 and 101 of 2010, culminated from FIR No. 929 of 2010 registered with Police Station Preedy Karachi for the offences punishable u/s 302, 353, 324, 427 and 34 PPC r/w S. 7 of the Anti-Terrorism Act 1997 (ATA) and FIR No. 963 of 2010 for the offence punishable u/s 13(D) Arms Ordinance. Through impugned judgment, the appellant Syed Abu Irfan was convicted u/s 302(c) PPC and sentenced to suffer rigorous imprisonment for 10 years whereas appellant Muhammad Ishtiaque was convicted and sentenced u/s 302(b) PPC to suffer rigorous imprisonment for life. Benefit of Section 382-B was also extended to them.

2. Precisely, facts of the prosecution case are that on 17.08.2010, DSP Nawaz Ranjha left his police station in official police car bearing No. SP-0324 along with his driver HC Jahangir for patrol after Taraveeh prayers. At 0005 hours, police party stationed near Muhammad Ali Jinnah Road heard firing coming from the vicinity and upon reaching Muhammad Ali Jinnah Road, they saw DSP Nawaz Ranjha and his driver, HC Jahangir, having sustained many injuries expired away in their car whereas a

passerby lady had also sustained firearm injuries. The dead bodies were shifted to Civil Hospital along with the injured lady for her treatment. As such, FIR was lodged.

3. After registration of FIR, investigation was conducted by the Investigating Officer (IO) and on its completion, a challan was submitted before the Court of law against the appellants. After compliance with section 265-C Cr.P.C, a charge was framed against the appellants to which they pleaded not guilty and claimed to be tried. At trial, prosecution examined as many as 24 witnesses namely PW-1 **Malik Muhammad Saleem Awan**, PW-2 **ASI Syed Bashir Hussain Shah**, PW-3 **SI Shamsuddin Rajput**, PW-4 **HC Mehmood Ali Chohan**, PW-5 **Dr. Mubarak Ahmed Yousafzai (MLO)**, PW-6 **SIP Rao Dilshad Ali**, PW-7 **SIP Ghulam Hussain**, PW-8 **SIP Abrar-ud-din**, PW-9 **PC Ghulam Muhammad**, PW-10 **Mst. Balqees (injured)**, PW-11 **Saima Arif Memon**, PW-12 **Ghulam Mustafa Gujjar**, PW-13 **Syed Sadam Hussain Kazmi**, PW-14 **Ahmer Siddiqui**, PW-15 **ASI Taqdeer Afridi**, PW-16 **Anwar Ahmed Memon**, PW-17 **Inspector Tahir Aziz Abbas**, PW-18 **SIP Sir Sahib**, PW-19 **Shahzad Ali Khan**, PW-20 **Muhammad Arif Mughal**, PW-21 **Rtd. Inspector Malik Muhammad Raees Awan**, PW-4 **HC Mehmood Ali Chohan** was re-examined as PW-22 after an application u/s 540 Cr.P.C, PW-23 **Inspector Muhammad Islam Rajput** and PW-24 **Inspector Abdul Fatah Phulpoto** who produced various documents and other items in their evidence which were duly exhibited. Thereafter, prosecution side was closed. Statement of accused were recorded u/S 342 Cr.P.C wherein they denied the prosecution case in toto and pleaded their innocence while alleging false implication. However, they did not examine themselves on oath in disproof of charge nor examined any witness in their defence.

4. After hearing learned counsel for the respective parties, learned trial Court convicted and sentenced the appellants through impugned judgment as stated supra.

5. Learned counsel for the appellants and learned Additional Prosecution General, when confronted with the legal position regarding several illegalities being committed by the trial Court, refuted the impugned judgment and conceded to the remand of the case back to the

trial Court for rewriting of the judgment in accordance with law after hearing the learned counsel for the respective parties.

6. It is a matter of record that the allegations levelled against the appellants were that of the murder of two police officials; DSP Nawaz Ranjha and HC Jahangir at Muhammad Ali Jinnah Road. The charge against them was framed u/S 302, 324, 353, 427, 109 and 34 PPC read with S. 7 of the ATA 1997 for both the appellants and u/s 13(d) Arms Ordinance for the appellant Syed Abu Irfan. Appellant Syed Abu Irfan was convicted u/s 302(c) PPC and acquitted u/s 13(d) Arms Ordinance, whereas the appellant Muhammad Ishtiaque was convicted u/s 302(b) PPC. The first point for consideration before this Court is whether the conviction of the appellant Syed Abu Irfan u/s 302(c) PPC was justified and well-reasoned. The Hon'ble Supreme Court, in the case of *Muhammad Juman v. The State and others* (2018 SCMR 318) has observed that:-

"9. As noted above, learned trial Court came to a conclusion that accused persons have committed an offence chargeable under section 302(b), PPC, which section provide either of the two legal sentences, viz. "death" OR "imprisonment for life." Learned trial court considered 'young age of the accused' and being close relative to each other' as mitigating circumstances to award lesser of the two legal sentences provided under section 302(b), PPC, viz. "imprisonment for life" and not "with death", the maximum sentence as provided under the charging provision.

10. As noted above, through impugned order, appellate Court while maintaining the conviction under section 302(b), PPC, modified the sentence to "already undergone", without application of mind and in a mechanical fashion, as noted above, either of the two legal sentence for an offence under section 302(b), PPC is provided, viz. "death" OR "imprisonment for life" and nothing in between, shorter or greater. In case the Appellate Court, looking at the attending and mitigating circumstances was convinced that the sentence awarded is severe and or that mitigating and or other attending circumstances existed or that the case is covered by any of the legal exception or that case of the respondent fell under clause (c) to section 302, PPC., and also beyond the pale of proviso thereto, it was only then Court could have exercised the discretion to award any term of sentence or punishment "with imprisonment of either description for a term which may extend to twenty five years...."

11. In the instant case as noted above, learned Bench of the High Court, without application of mind and recording any reasons to alter a sentence, in a mechanical manner, reduced the sentence as already undergone, which is not a legal sentence within the contemplation of section 302(b), PPC."

7. The Hon'ble Apex Court, in the case of *Muhammad Asif v. Muhammad Akhtar* (2016 SCMR 2035) has also observed regarding the applicability of S. 302(c) PPC that:-

In order to attract provisions of Exception 4 to the erstwhile section 300, P.P.C it had not only to be established that the case was one of a sudden fight taking place without any premeditation in the heat of passion upon a sudden quarrel but it was also required as a necessary ingredient that the offender must not have taken undue advantage or must not have acted in a cruel or unusual manner.

(emphasis supplied)

Such view was reaffirmed by the Hon'ble Apex Court in judgment dated 04.06.2020 while deciding the unreported case of *Javed Akhtar v. The State (Jail Pet. No. 462 of 2016)*. In the present case, there is no evidence of a sudden fight, let alone anything suggesting that the murders were committed in the heat of passion. The appellants allegedly armed themselves with pistols and opened fire upon the deceased police officials who were seated in their official car, which (the act) *prima facie* appears to have been done in a cruel manner without giving any importance to two innocent lives. Therefore, there isn't a single circumstance that would attract the provisions of S. 302(c) PPC erstwhile awarding 10 years, the lowest available sentence without assigning any cogent reasoning or observing any mitigating circumstances besides the falsified recovery of crime weapon which it relied on to acquit him from the offence of possession of the said weapon. Learned trial Court did not assign any reasoning as to why it considered the applicability of S. 302(c) PPC over S. 302(b) PPC and in the absence of such circumstances, the conviction as such cannot sustain.

8. It is also an admitted position that appellant Muhammad Ishtiaque was convicted u/s 302(b) PPC and was sentenced to life imprisonment. S. 302(b) PPC is punishable by death or imprisonment for life. For the sake of convenience, section 302(b) PPC is reproduced as follows:-

“302. Punishment of qatl-i-amd.--Whoever commits *qatl-i-amd* shall, subject to the provisions of this Chapter, be— (b) punished with *death or imprisonment for life as ta'zir* having regard to the facts and circumstances of the case, if the proof in either of the forms specified in Section 304 is not available.”

9. The learned trial Court has also not assigned reasons for not awarding death sentence to the appellant Muhammad Ishtiaque for an offence u/s 302(b) PPC which is punishable with death or imprisonment for life, as per provisions of S. 367(5) Cr.P.C even though the trial Court was under legal obligation to do so as held in the case of *Muhammad Jumman's*

case (*supra*). Worthwhile to mention here that although the charge was framed u/S 302, 324, 353, 427, 109 and 34 PPC read with S. 7 of the ATA 1997, the only conviction and sentence awarded was under S. 302(b) to the appellant Muhammad Ishtiaque and under S. 302(c) to the appellant Syed Abu Irfan. Trial Court had failed to record specific findings on whether the appellants had been acquitted or convicted under the rest of the sections *i.e.* section 324, 353, 427, 109 and 34 PPC r/w section 7 of the ATA 1997 in the concluding paragraph of the impugned judgment besides the acquittal u/s 13(d) Arms Ordinance of the appellant Syed Abu Irfan.

10. In view of the above, we find that in the absence of such reasons and mitigating circumstances, the learned trial Court has committed several illegalities while passing the impugned judgment which is in complete departure from the procedural law. As such, we partly allow the instant appeals and set aside the conviction and sentence awarded to the appellants vide judgment dated 03.04.2019 and remand the case back to the learned trial Court for re-writing of the judgment while assigning cogent reasons for any deviation from the prescribed sentences and to also decide the fate of the appellants at its end while giving its findings, in writing, on all the sections on which the charge was framed, fully in accordance with law after providing full opportunity of hearing to the parties. This exercise shall be completed within three months under intimation to this Court. A copy of this Judgment shall be sent to the learned Administrative Judge of the Anti-Terrorism Court in Karachi who shall ensure its compliance.

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