

## IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Jail Appeal No. 75 of 2014

Appellant : Jalal  
through Mr. Muhammad Arshad, Advocate

Respondent : The State  
through Mr. Muntazir Mehdi, D.P.G.

Date of hearing : 28<sup>th</sup> November, 2022

### JUDGMENT

**Omar Sial, J.**: Learned counsel submits that he does not wish to argue this appeal on merits but prays that the 2 sentences given to the appellant be ordered to run concurrently. The learned DPG submitted that the Hon'ble Supreme Court on a number of occasions has allowed the same. He therefore had no objection if the 2 sentences were treated to run concurrently. Notices were issued to the complainant but nobody effected an appearance. I have heard the counsels and the learned DPG.

2. The appellant was convicted under section 302(b) P.P.C. by the learned 2<sup>nd</sup> Additional Sessions Judge, Karachi East on 08.01.2014 for the murders of 2 individuals named Bilal and Fareed. He was awarded life sentences for both murders. The learned judge did not however specify whether the sentences were to run concurrently or consecutively. Accordingly, the 2 life sentences given to him at the same trial and the imprisonment period in lieu of fine, meant that the appellant would have to remain in jail for 50 years and 6 months. The jail roll shows that the appellant has completed 28 years and 8 months of his sentence, which period includes the remissions he was entitled to under section 382-B Cr.P.C.

3. The Supreme Court of Pakistan in **Shah Hussain vs The State (PLD 2009 SC 460)** observed that:

*The petitioner in the instant case was sentenced to 10 years' R.I. and imprisonment for life on two counts. His sentences were ordered to run consecutively. The aggregate sentence of the petitioner would thus come to sixty years, which is contrary to the provisions of section 35, Cr.P.C. Proviso (a) to section 35, Cr. P.C. prohibits the giving of consecutive sentence in one trial beyond the period of 14 years. This issue came up for examination by this Court in the case of Javed Shaikh v. State (PLD 1985 SC 153) wherein it was held as under:--*

*"Life imprisonment is according to section 57 of the P.P.C. to be reckoned as equivalent to 25 years' R.I. This is one of the punishments which can be imposed on an offender, on account of the substitution of the punishment for transportation for life which was one of the punishments that could be imposed on an offender under section 53 of the P P.C. and was reckoned as equivalent to fourteen years before its amendment by the Law Reforms Ordinance, 1972. No objection can, therefore, be taken to the Imposition of the sentence of life imprisonment, after the promulgation of the Law Reforms Ordinance 1972. However, the question is whether the appellant can also be sentenced to undergo a further sentence of seven years under section 307, P.P.C. for his having attempted to murder Manzoor Hussain, P. W .5.'1*

*A perusal of proviso (a) to subsection (2) of section 35, Cr.P.C., indicates that it prohibits the giving of consecutive sentence in one trial beyond the period of fourteen years, the maximum sentence, short of the death sentence, which could be imposed on an offender before the promulgation of the Law Reforms Ordinance, 1972. The said provision (section 35, Cr.P.C.) appears to be in consonance with the scheme and intendment of the Pakistan Penal Code that an offender should only suffer the maximum sentence (it Imprisonment for any heinous crime (as it stood until 1972) which should not exceed fourteen years. Therefore, the imposition of the sentence of life imprisonment (which means 25 years' R.I., plus seven years' R.I. under section 307, P.P.C. would be inconsistent with the intendment of the provisions of proviso (a) to subsection (2) of section 35, Cr.P.C., in as much as the maximum punishment prescribed for heinous offences shall be exceeded. The*

*difficulty in this case can be overcome if the sentences awarded to the appellant in respect of the two convictions under section 302, P.P.C. and under section 307, P.P.C. in one and the same trial are directed to run concurrently instead of running consecutively."*

4. The Supreme Court of Pakistan in **Ishfaq Ahmad vs The State (2017 SCMR 307)** has observed that *"ordinarily more than one sentence of imprisonment passed against accused would run concurrently to each other"*. A similar situation had arisen in this case and the Court ordered that the 2 life sentences run concurrently, when it had not been specified (by the High Court in that case) whether the sentences were to run concurrently or consecutively.

5. It is pertinent to also mention that in **Mst. Zubaida vs Falak Sher and others (2007 SCMR 548)** the Supreme Court of Pakistan observed, on section 35 Cr.P.C. that *"It would be clear from reading of the above provision that aggregate of punishments of imprisonment for several offences at one trial were deemed to be a single sentence. Therefore, there could not be more than a life sentence at one trial."* In the same case the Honorable Supreme Court referred to several cases on the same issue. In paragraph 7 of the said judgment, the Court observed that:

7. *This point was considered by this Court in some cases. In Javid Shaikh v. The State 1985 SCMR 153; the trial Court imposed consecutive sentences of life imprisonment (25 years) under section 302, P.P.C. and 7 years' R.I. under section 307, P.P.C. It was held that the sentence of 7 years' R.I. under section 307, P.P.C. would not run consecutively in view of section 35(2) proviso (a) as the same would exceed the maximum punishment of imprisonment for life. Therefore, both the sentences were directed to run concurrently. In the case of Juma Khan and another (supra), the sentences of imprisonment for life were imposed by the trial Court under section 302, P.P.C. on each count. This Court took the view that total period of imprisonment at one trial could not exceed 25 years. A somewhat similar view was taken in the case of Khan Zaman and others v. The State 1987 SCMR 1382 and Muhammad Ittefaq v. The State 1986 SCMR 1627. In*

*Abdul Malik and others v. The State and others PLD 2006 SC 365, a larger Bench of this Court observed that the maximum sentence of a life convict was 25 years which could, however, be reduced to 15 years in view of Rule 140 of the Prison Rules.*

6. Taking guidance from the wisdom of the Honorable Supreme Court, and for the reasons highlighted by the apex Court in the judgments referred to above, the 2 life sentences awarded to the appellant for an offence punishable under section 302(b) P.P.C. are ordered to run concurrently. The 6 month period in lieu of fine shall run consecutively with the sentence for section 302(b) P.P.C. It appears that the appellant has served his time in prison, which includes the imprisonment in lieu of fine. The Senior Superintendent Prison to confirm the same and if the sentence of the appellant is complete, he should be released forthwith if not required in any other custody case.

7. The appeal stands dismissed subject to the modification of the sentences running concurrently.

JUDGE