

IN THE HIGH COURT OF SINDH AT KARACHI

Cr. Appeal No. 225 of 2021

[Abdul Khaliqv..... The State]

Date of Hearing : 26.07.2023
Appellant through : Ms. Abida Parveen Channar, Advocate.
Respondents through : Mr. Hussain Bux Baloch, Addl. P.G.

ORDER

Zulfiqar Ahmad Khan, J:- Through instant Criminal Appeal, the appellant has impugned the judgment dated 15.02.2021, passed by the learned Additional Sessions Judge-I Karachi East, in Sessions Case No. 2457 of 2019, arising out of FIR No.299/2019, under section 324, 337-A(i), 34 r/w 302 PPC at Police Station Shahrah-e-Faisal, Karachi, whereby appellant was convicted and sentenced to suffer R.I. 10 years and fine of Rs.200,000/-. In default, the appellant has to undergo S.I. for 6 months. The benefit provided under Section 382-B Cr.P.C was also extended to the appellant.

2. The allegation against the appellant is that on 26.03.12019 at about 03:00 p.m. he in conjunction with his absconding accused inflicted churry blows on the neck of deceased Talib Hussain owing to which the deceased succumbed to the injuries.

3. After framing of charge, the prosecution has examined as many as Five (05) witnesses. PW-01 Muhammad Ismail at Exh. 5, PW-02, Fazal Hussain at Exh. 6, PW-03 Ejaz Ahmed at Exh. 7, PW-04 Muhammad Tayyab at Exh. 11, PW-05 Abdul Ghani Bilali at Exh. 26, Thereafter prosecution side was closed vide Ex:33 and statements of appellant under section 342, Cr.P.C. was recorded at

Exh. 34, who claimed his innocence, however, neither examined himself on oath nor led defense witnesses in support of their claim.

4. After observing all formalities and hearing the parties, the learned trial Court convicted the appellant through impugned judgment in the manner described in the operative part of this edict.

5. Learned counsel for the appellant, at the very outset, submits that though the appellant has a good case on merit but since he is aged about 50 years and is suffering from multiple diseases which are not curable inside jail so also is a lone bread earner of his family. She further submits that appellant has already served out major portion of his sentence; therefore, under the circumstances she would be satisfied and shall not press this Criminal Appeal if the sentence awarded to the appellant is reduced to one as already undergone.

6. Learned Addl. P.G. has opposed this appeal on merit.

7. It is noted that appellant was convicted and sentenced to suffer R.I. for ten (10) years with fine of Rs.200,000/-. Perusal of record reveals that the appellant is behind the bar since 2019 and that he has already served out major portion of his sentence. Nothing has come on record as to whether the appellant has ever remained involved in such type of cases or he was convicted. Moreover, as stated at Bar by learned counsel for the appellant, the appellant is suffering from multiple diseases which are serious in nature and not curable inside jail. It appears from the record that the sentence awarded by the trial Court to appellant is in line with the sentencing policy as laid down in the case of Ghulam Murtaza and another v. The State reported in PLD 2009 Lahore page 362; however, while

considering the aforementioned circumstances, it would meet the ends of justice if sentence of the appellant is reduced to one as already undergone including the period of imprisonment in lieu of non-payment of fine i.e. Rs.200,000/- imposed upon the appellant. In this context we are fortified by the case of Ghulam Murtaza (Supra), wherein it was held as under:--

“10. It goes without saying that in a particular case carrying some special features relevant to the matter of sentence a Court may depart from the norms and standards prescribed above but in all such cases the Court concerned shall be obliged to record its reasons for such departure”.

8. In view of the above, this Criminal Appeal is hereby dismissed, and the impugned judgment dated 15.02.2021 is maintained. However, while deviating from the sentencing policy as held in the case of Ghulam Murtaza stated supra, the conviction and sentence awarded to the appellant is reduced to one as already undergone. Resultantly, the appellant Abdul Khaliq son of Khadim Hussain, who is confined in Central Prison, is directed to be released forthwith, if not required in any other case.

Karachi
Dated: 26.07.2023.

JUDGE

Aadil Arab.