IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR
Criminal Jail Appeal No.D-40 of 2020
Confirmation Case No.D-06 of 2020

Present;

Irshad Ali Shah,J.
Zulfiqar Ali Sangi,J

Appellant:	Jindal Shah alias Hussain Bux Shah **through** Mr. Ali Ahmed Khan, advocate.
The Complainant.	**Through** Mr. Rukhsar Ahmed Junejo, advocate.
The State:	**Through** Syed Sardar Ali Shah Rizvi, Additional Prosecutor General.
Date of hearing	20-03-2024.
Date of decision	20-03-2024.

J U D G M E N T

<u>*IRSHAD ALI SHAH, J.*</u> It is case of the prosecution that appellant with rest of the culprits after having formed an unlawful assembly and in prosecution of its common object committed murder of Misri Shah @ Fazal Hussain Shah by causing him fire shot injuries and then went away by making aerial firing to create harassment, for that the present case was registered. On conclusion of trial, the appellant was convicted u/s 302 (b) PPC and sentenced to *death* as *Ta'zir* and to pay compensation of Rs. 500,000/- to the legal heirs of the deceased and in default in payment whereof to undergo simple imprisonment for six months subject to confirmation by this Court by learned IIIrd Additional Sessions Judge/(MCTC-II), Sukkur vide judgment dated 17-11-2020, which is impugned by the appellant before this Court by preferring a Criminal Jail Appeal. A reference is

also made by learned trial Court for confirmation of *death* sentence to the appellant.

2.   At the very outset, it is stated by learned counsel for the appellant that he would not press the disposal of instant Criminal Jail Appeal before this Court on merits provided the *death* sentence awarded to the appellant is modified with imprisonment of life by considering the mitigating circumstances of the case, which is not opposed by learned Additional P.G for the State and learned counsel for the complainant.

3.   Heard arguments and perused the record.

4.   The appellant is old man of 60 years of the age; he is said to be sole bread earner of his family. By not pressing disposal of his appeal on merits, he has shown remorse, thus there is likelihood of his reformation. By considering all these factors as mitigating circumstances, the *death* sentence awarded to the appellant for the said offence is modified with imprisonment for life as *Ta'zir* and to pay Rs. 500,000/- to the legal heirs of the deceased as compensation and in default in payment whereof to undergo simple imprisonment for six months with benefit of section 382 (b) Cr.P.C.

5.   In case of ***Ghulam Mohiuddin alias Haji Babu & ors Vs. The State (2014 SCMR-1034)***, it has been held by Apex Court that:

> *"---S.302(b)---Qatl-e-amd---Sentence---Death sentence or imprisonment for life—Single mitigating circumstance—Sufficient to award life imprisonment instead of death penalty---Single mitigating circumstance, available in a particular case, would be sufficient to put on*

guard the Judge not to award the penalty of death but life imprisonment---If a single doubt or ground was available, creating reasonable doubt in the mind of Court/Judge to award either death penalty or life imprisonment, it would be sufficient circumstance to adopt alternative course by awarding life imprisonment instead of death sentence---No clear guideline, in such regard could be laid down because facts and circumstances of one case differed from the other, however, it became the essential obligation of the Judge in awarding one or the other sentence to apply his judicial mind with a deep thought to the facts of a particular case---If the Judge/Judges entertained some doubt, albeit not sufficient for acquittal, judicial caution must be exercised to award the alternative sentence of life imprisonment, lest an innocent person might not be sent to the gallows---Better to respect human life, as far as possible, rather than to put it at end, by assessing the evidence, facts and circumstances of a particular murder case, under which it was committed".

6.   Subject to above modification, the instant Criminal Jail Appeal is dismissed. The death reference is answered in negative.

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J U D G E

Nasim/P.A