

53

IN THE HIGH COURT OF SINDH, CIRCUIT COURT
LARKANA

Criminal Jail Appeal No. D- 60 of 2019
Criminal Confirmation Case No. D- 30 of 2019

Present:

Mr. Justice Naimatullah Phulpoto
Mr. Justice Khadim Hussain Tunio

Appellant:

Zaffar Ali Haslo son of Ghulam Hussain through Mr. Abdul Hakeem Brohi advocate.

The State:

Through Mr. Ali Anwar Kandhro, Addl. P.G.

Dates of hearing: 20.09.2022 and 21.09.2022
Date of decision: 28.09.2022

J U D G M E N T

Khadim Hussain Tunio, J: Through captioned criminal appeal filed by appellant Zaffar Ali, the appellant has impugned judgment dated **21.09.2019**, passed by learned 1st Additional Sessions Judge/MCTC Kamber in Sessions Case No. 120/2019 (*Re: State v. Zaffar Ali*), whereby he has convicted the appellant under section 302(b) P.P.C and awarded him death penalty for the murder of deceased Manthar Ali Haslo and directed to pay compensation of Rs.500,000/- to the legal heirs of deceased in terms of Section 544-A Cr.P.C. and in case of non-payment to undergo further simple imprisonment of six months, whereas the Reference has been filed by trial Court for confirmation of death sentence in terms of Section 374 Cr.PC or otherwise.

2. Briefly, the prosecution case is that on 30.03.2019, complainant SIP Jan Muhammad Mangrio, during patrolling, received information regarding the murder of one Manthar Ali. On receiving the said information, the complainant proceeded to the place of incident and was further informed by the brother of deceased namely Ghulam Asghar that the murder was committed by appellant Zaffar Ali with T.T pistol.




The complainant inspected the dead body of the deceased and then got the same transported to Civil Hospital Kamber for postmortem examination and report. Then, the complainant proceeded to the house of appellant Zaffar Ali where he met Khadim Ali and Muhammad Saleem who were the brothers-in-law of appellant and they disclosed to SIP Jan Muhammad that the appellant had also attempted to commit the murder of Mst. Ghanwa, his own wife and had caused fatal injuries to her on the pretext of *Karo-Kari* with deceased Manthar Ali. The complainant found the injured lady Mst. Ghanwa in serious condition, issued her a letter for treatment and then came back to the police station and lodged the FIR against appellant Zaffar Ali on behalf of State for offence under section 302, 311 P.P.C.

3. After usual investigation, the charge sheet was filed against appellant by the police. A formal charge was framed against the appellant to which he pleaded not guilty and claimed to be tried.
4. The prosecution, in order to prove its case against appellant examined in all six witnesses namely complainant SIP Jan Muhammad Mangrio, mashir/corpse bearer PC Akhtiar Ali Kalhoro, eye-witness Ghulam Asghar Haslo, eye-witness Dildar Ali Haslo, Tapedar Shamsuddin Jatoi and Dr. Brahma Wadhvani after which the learned prosecutor closed side of prosecution.
5. Statement of appellant under Section 342 Cr.PC was recorded, wherein he denied all the allegations levelled against him, claimed to be innocent and stated that prosecution had managed a false case against him. However, he neither examined himself on oath nor examined anyone in his defence. Trial Court after hearing learned counsel for the parties and assessment of evidence convicted the appellant as stated above.
6. Learned counsel for the appellant has contended that the judgment of the trial Court is against the law, facts and equity and liable

to be set-aside; that the appellant is innocent and has committed no offence, but he was involved in the case due to dispute over landed properties between parties; that the trial Court has failed to appreciate the factual as well as legal aspects of the case, while convicting the appellant; that the evidence adduced by the prosecution at the trial is not properly assessed and evaluated by the trial Court and the evidence is insufficient to warrant conviction of the appellant; that the prosecution witnesses contradicted each other on material points and case is full of major contradictions and discrepancies; that the impugned judgment suffers from misreading and non-reading of evidence; that even motive of the incident has not been established by the prosecution at trial; that defence has created so many doubts in the prosecution case and benefit of which may be extended in favor of the appellant by setting-aside the impugned judgment and ordering acquittal of the appellant. In support of his contentions, he has cited the case law reported as *Qamar Ehsan v. the State (2004 P.Cr.L.J. 47)*.


7. Conversely, learned Additional Prosecutor General for the State contended that the appellant was nominated in F.I.R with specific role of making fire upon deceased Manthar Ali on the allegation of "Siyah-Kari", and not only this but the appellant was also booked and challaned in the case for attempt to murder of his own wife Mst. Ghanwa and that there is also recovery of crime weapon from possession of appellant; that all the prosecution witnesses have supported the prosecution's case; that ocular account is in consonance with medical and circumstantial evidence; that no material contradictions and discrepancies have been pointed out by the defence counsel; that prosecution has established its case beyond any shadow of doubt against the appellant and learned trial Court has rightly convicted the appellant. However, he while citing the case law reported as *Muhammad Pervaiz v. the State (2000 PCr.LJ 147)* conceded to the fact that motive was not fully established by the prosecution at trial.



8. We have heard the learned counsel for appellant and learned Additional Prosecutor General and have perused the record brought before us.

9. The occurrence took place on 30.03.2019 at about 06:40p.m. (night time), the matter was reported to the police by PW.3 Ghulam Asghar. The case of the prosecution is firmly structured on ocular account, furnished by the witnesses, viewed from any angle, natural and trust worthy. Duration of the injury coincides with the fatality that befell the deceased. Wounds on the person of deceased are consistent with the weapon used and allegedly recovered from the appellant i.e. a TT pistol. The witnesses are in comfortable unison on all the salient aspects of the incident as well as details collateral therewith. Although the eye-witness/informant is the brother of the deceased, hence closely related, yet he has no enmity or strong motive to falsely involve the appellant for committing murder of his blood relative (*real brother*). It may well be added that mere relationship is not sufficient to bring one (witness) within meaning of category of '**interested witness**' but it shall always be the '*motive*' of such an event that one agrees to involve an innocent person at the cost of escape of *real culprit*. Reference in this respect is made to the case of *Farooq Khan v. The State (2008 SCMR 917)*. It would be extremely unlikely for the complainant to set free the real culprit and nominate innocent persons instead and that too without any justifiable rhyme or reason. It appears extremely unreasonable to even consider such a fact. Reference is made to the case of *Islam Sharif v. The State (2020 SCMR 690)*. Parties are also known to each other, as such there is no question of misidentification.

10. There were two eye-witnesses in the present case, namely Ghulam Asghar and Dildar Ali who appeared before the learned trial Court in support of the prosecution case. They also remained consistent on all material particulars of the case and the defence failed to shake



anything from their testimony despite the cross-examination which they were subjected to during the trial. They corroborated the prosecution case as presented in the FIR. Another important point in this case is that no suggestion was put to the prosecution witnesses as to why the appellant has falsely been implicated in this case. The witnesses have no enmity whatsoever with the appellant and no enmity was even suggested. Their presence at the place of occurrence is natural as they reside in same locality. Even substitution in a criminal case is a rare phenomenon. PW-1 SIP Jan Muhammad had also recovered a single empty of TT pistol from the place of incident and had also recovered the crime weapon from the appellant i.e. a TT pistol. The crime empty along with the TT pistol was sent to the ballistic expert and vide report dated 08.04.2019, it was observed by the ballistic examiner that the empty recovered from the place of incident was the one fired from the TT pistol recovered from the appellant at the time of his arrest. Moreover, blood stained earth was also recovered from the place of incident which too was sent to the chemical examiner and it was found to be stained with human blood. PW-3 Ghulam Asghar deposed that he along with his brother Manthar Ali and maternal cousin Dildar Ali *"was present in the hotel of one Deedar Ali Mugheri situated at Village Hasla Taluka Kamber and taking tea. All of a sudden, Zafar Ali s/o Ghulam Hussain Haslo came there. I saw that he was armed with TT pistol. As soon as he came there he disclosed that Manthar Ali is Karo with his wife Mst. Ghanwa Haslo, hence he will not spare him today. It was time about 06:40 pm. At that time accused Zafar Ali fired at my brother Manthar Ali with intention to commit his murder and such fire hit him on back side of his head and crossed through his right eye. My brother fell down on the ground and accused escaped from there. After that, I along with Dildar saw and found him dead on the spot."* His version was corroborated by PW-4 Dildar Ali who deposed that while they were having tea, *"suddenly at about 6:40 pm*

my relative namely Zafar Ali son of Ghulam Hussain Haslo came there. I saw that he was armed with TT pistol. As soon as he came there he disclosed that Manthar Ali is Karo with his wife Mst. Ghanwa Haslo, hence he will not spare him today and fired straight at Manthar Ali with intention to commit his murder which hit him on back side of his head and the bullet crossed through his right eye and he fell down on the ground and accused escaped from there. After that I along with Ghulam Asghar found that Manthar Ali died on the spot."

11. Apart from above, the ocular account in this case is supported by the medical evidence furnished by PW-6 Dr. Brahma Wadhvani with respect to the nature and locale of the injuries. He conducted post-mortem examination on the body of deceased on 30.03.2019, and noted following injuries on the person of the deceased:-

"1. A lacerated punctured wound 1 ½ cm in diameter circular in shape with inverted margins on the occipital region of head (wound of entrance).

2. A lacerated punctured type of punctured wound 2 cm in diameter irregular in shape with averted margins, on the right cheek near right eye (wound of exit)."

12. The motive alleged in the F.I.R was honor killing because the appellant suspected the deceased to have developed illicit relations with his wife Mst. Ghanwa. However, the injured Mst. Ghanwa was never examined before trial Court to prove said motive. Needless to say that lack or failure in proving the pleaded *motive* normally loses its substance if the case is otherwise proved, but at most would reflect upon quantum of sentence as a *mitigating circumstance*, as held in the case of *Amjad Shah v. State*(PLD 2017 SC 151).

13. From the above noted circumstances, we are of the opinion that the prosecution has successfully proved its case through confidence inspiring ocular account furnished by the prosecution witnesses, which is strongly supported by medical evidence, which has led us to an irresistible

conclusion that the learned trial Court has rightly convicted the appellant through the impugned judgment.

14. The point now requiring consideration before this Court is whether there are any mitigating circumstances which could justify the sentence awarded to the appellant being modified. We have noted certain extenuating circumstances which suggest that this is a fit case for deviation from the normal sentence of death, *firstly*; that the appellant fired only one shot and did not repeat the same, although there was nothing to stop him from doing so and, *secondly*; motive behind the commission of the offence was not fully proved by examination of the injured lady Mst. Ghanwa who was allegedly declared as *Kari* with the deceased. It has been, time and again re-iterated by the Hon'ble Apex Court that while death sentence is the usual penalty in cases of *qatl-i-amd*, life imprisonment being a legal punishment may also be considered. The same principle has been established in the case reported as *Sharafat Ali Khan v. The State (2010 SCMR 1205)*, wherein the Hon'ble Supreme Court of Pakistan has observed as under:-

"In Muhammad Riaz and another v. The State (2007 SCMR 1413), while considering the penalty for an act of commission of qatl-i-amd it was observed "No doubt, normal penalty for an act of commission of qatl-i-amd provided under the law is death, but since life imprisonment also being a legal sentence for such offence must be kept in mind wherever the facts and circumstances warrant mitigation of sentence, because no hard and fast rule can be applied in each and every case. Reference in the context may also be made to Iftikhar Ahmad Khan v. Asghar Khan and another (2009 SCMR 502)."

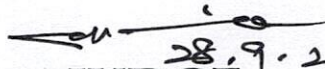
15. It is well-established principle of law that even a single mitigating factor can be considered sufficient by the Court to award a lesser sentence. The Court can exercise its discretion where a case qualifies for awarding of both, imprisonment for life or death penalty, in the presence of a mitigating circumstance to award a lesser sentence. We are fortified in our view by the case law titled *Ghulam Mohy-ud-Din*

alias Haji Baby and others v. The State (2014 SCMR 1034).As such, keeping in view of said factor, sentence awarded to appellant Zaffar Ali is modified from death sentence to life imprisonment.

16. In view of the above discussion, circumstances and the ratio of case law referred above, we are of the considered view that the prosecution has proved its case against the appellant. Resultantly, conviction awarded to the appellant is maintained. However, death sentence is converted to imprisonment for life. Appellant should be entitled to the benefit of section 382-B Cr.P.C. The sentence of fine and sentence in default of fine, however, is maintained.

17. The Appeal and Confirmation Case stand disposed of in above terms.


28.9.2022
JUDGE


28.9.2022
JUDGE