

**JUDGMENT SHEET
IN THE HIGH COURT OF SINDH CIRCUIT COURT
HYDERABAD**

Criminal Jail Appeal No.D-33 of 2023
Confirmation Case No.D-33 of 2023

Criminal Jail Appeal No.S-60 of 2023

Present:-

Mr. Justice Amjad Ali Sahito

Mr. Justice Khadim Hussain Soomro.

Appellant: Muhammad Hussain through Mr. Badal Gahoti, Advocate

Respondent: The State through Mr. Shawak Rathore, Deputy Prosecutor General Sindh.

Date of hearing: 22.10.2024.

Date of Judgment: 22.10.2024.

J U D G M E N T

AMJAD ALI SAHITO, J. Being aggrieved and dissatisfied with the judgment dated 22.03.2023, passed by the learned 1st Additional Sessions Judge, Mehar in Sessions Case No.459/2020 arising out of the FIR No.44/2020 for offence under sections 302 PPC registered at PS Faridabad, whereby the appellant was convicted under section 302(b) PPC for committing the murder of deceased Naseer Ahmed Rind and sentenced to death subject to confirmation of this Court. He was also directed to pay compensation of Rs.1,00,000.00 [Rupees one hundred thousand only] to the legal heirs of deceased or in case of default to suffer S.I for six months more. A reference for confirmation of death sentence was also sent to this Court. In a separate case registered against the appellant

being offshoot of the main case vide Crime No.48/2020 for the offence punishable under section 25 Sindh Arms Act, 2013, the appellant was also convicted and sentenced to suffer R.I. for ten years with fine of Rs.10, 000.00 or in case of default to suffer S.I for six months more vide judgment dated 22.03.2023 in S.C. No.409/2020. However, the benefit of section 382-B Cr.P.C. was also extended to the appellant.

2. Briefly the facts of the prosecution case are that on 11.08.2020 at 11:00 PM, complainant Mst. Mariam registered an FIR at PS Faridabad. She reported that hot words had taken place between her brother, Naseer Ahmed, and the children of Muhammad Hussain, leading to a physical altercation. After dinner, the family went to sleep, with Naseer on a cot in the courtyard and their father Muhammad Hussain on the roof. Around 4:00 AM, the complainant and others were awakened by gunfire and found Naseer on the ground, injured and crying out for help and the blood was oozing and Muhammad Hussain made another direct gunfire upon Naseer Ahmed with intention to kill him. The complainant party, fearing for their safety, did not go near to the accused. After descending from the roof with the gun, Muhammad Hussain left the house. The complainant's family took Naseer, but he ultimately succumbed to his injuries. He received gunshot injuries to his head, left side of the chest, left elbow, and ribs on his left side. Due to the late hour, the complainant's family remained in the house and in the morning, Cousin Wazeer Ali informed the police about the incident. The police arrived, initiated an investigation, and conducted a post-mortem. After the funeral, the complainant registered her FIR, alleging that her father, Muhammad Hussain, murdered her brother Naseer Ahmed.

3. After completing the investigation of the case, the challan was submitted by the Investigating Officer against the above named accused before the concerned Court.

4. The trial Court framed the charge against appellant/accused, to which he pleaded not guilty and claimed

to be tried. In order to establish accusation against the accused, the prosecution examined as many as seven witnesses which include complainant Mst. Mariam, ASI Barkat Ali (1st I.O. of the case), Wazeer Ali (eyewitness), Dr. Wazeer Ahmed Thebo, SIP Fida Hussain Jatoi (being aware of the signature of Inspector Abdul Rehman), Wazeer Ali (mashir) and Tapedar Manzoor Ali who produced numerous documents in evidence. Thereafter the prosecution closed its side vide statement.

5. Statement of accused was recorded under Section 342 Cr. P.C., wherein he denied the prosecution allegation leveled against him. However, the appellant has neither examined himself on oath under section 340(2) Cr.P.C. nor led any evidence in his defence.

6. The learned trial Court, after hearing the learned counsel for the parties and appraisal of the evidence, convicted and sentenced the appellant vide judgment dated 22.03.2023. The conviction and sentence, recorded by the learned trial Court, have been impugned by the appellant before this court by way of filing the instant Criminal Jail Appeal.

7. Learned counsel for the appellant mainly contended that the appellant is innocent and has falsely been implicated in the murder case; that there are contradictions in the evidence of PWs; that the motive as stated by the prosecution is weak one; that in fact the deceased was murdered by thieves but the appellant has been implicated falsely; that there is no independent person has been shown as a witness to believe that the appellant has committed the offence. Lastly, he contended that the prosecution has miserably failed to prove its case against the appellant and thus, according to him, the appellant is entitled to his acquittal **OR** at least considering the mitigating terms and advance age of appellant i.e. 73 years, the conviction and sentence is liable to be converted from death penalty to imprisonment for life.

8. Conversely, the learned D.P.G. while supporting the impugned judgment argued that all the prosecution witnesses

have fully supported the case against the appellant. However, after apprising of the facts, learned D.P.G. stated that at the time of recording statement under section 342 Cr.P.C. the appellant was aged about 73 years, as such, since appellant is of advanced age, therefore, he has no objection if his sentence is converted from death penalty to imprisonment for life.

9. We have heard the learned counsel for the parties and have gone through the evidence as well as impugned judgment with their able assistance.

10. The appellant is the father of the deceased, while the complainant is the deceased's sister, as such, they are related inter-se. The incident arose from a minor altercation regarding children, which is unlikely to lead to murder by a father with premeditation, who is of advanced age of 73 years. However, the eyewitnesses have deposed against the appellant.

11. The medical evidence has also supported the ocular version. The circumstantial evidence is also provided as the crime weapon i.e. DBBL gun was recovered on the pointation of appellant; the empties were collected from the place of incident; blood stained earth where the deceased had received injuries was also collected and sent to the Analyzer, Sindh Forensic DNA and Serology Laboratory was found stained with human blood. The prosecution witnesses are in line in respect of the vital points in their depositions and they could not be shaken during cross examination. The availability of the appellant at the place of incident is also established through the evidence of prosecution witnesses. In the instant case, we have not observed any major contradiction in the depositions. The contention of learned counsel for appellant regarding lack of independent witnesses is not considerable because the eye witnesses are natural witnesses and they have fully supported the prosecution case connecting the appellant with the commission of offence.

12. The law of land is that normal sentence for an offence of murder is death which is to be awarded as a matter of course except where the Court finds some mitigating

circumstances which may warrant imposition of lesser sentence. In the instant case, though the ocular account is fully corroborated by medical evidence and so the recovery of DBBL gun through which it is stated that the murder of deceased Naseer Ahmed was committed by appellant. As far as the motive urged by prosecution is concerned i.e. “*exchange of harsh words over the children*”, it is well settled that once motive was alleged by the prosecution, then it was under legal obligation to establish the same. However, a careful perusal of entire evidence, the prosecution has failed to prove the motive and when motive is not proved then the Courts have to take great care and caution while awarding capital punishment to an accused person and to ensure that the evidence which is being made basis for capital punishment is consistent, cogent, reliable, independent and confidence inspiring and coming through unimpeachable source. The prosecution has not disclosed motive justifying that due to such object a human lost his life; there may be some differences between the parties but no such tangible evidence has come on record to justify such situation to be a motive of murder and may led us to consider that there is an intention to commit murder which appears to be lacking.

13. In such a situation, the Court has to see quality and not the quantity of evidence; hence, in our view the incident took place at the spur of moment without pre-meditation. In the circumstances, we would like to observe that punishment provided under section 302(b) PPC as Ta’zir relates to death or imprisonment for life, both the sentences are available under this head but the circumstances are not spelled out in section 302 (b) PPC, in which either of the two punishments can be awarded. We are fortified with the case of “**Muhammad Sharif v. The State**” (PLD 2009 Supreme Court 709) whereby the Hon’ble Supreme Court has elaborated the similar question as under:-

“It has been seen and observed from the perusal of the various proceedings in relation to section 302 of P.P.C.

in particular its clause (b), that there is a choice and discretion left with the Court to inflict punishment “with death or imprisonment for life as tazir having regard to the facts and circumstances of the case.”

14. The upshot of the above discussion is that the prosecution has successfully established its case against the appellant. However, considering the mitigating circumstances of the case with the respective guidance of apex Court, we have no other option but to convert conviction and sentence of the appellant from death penalty to imprisonment for life. Accordingly, the conviction and sentence awarded to the appellant for offence under section 302[b] PPC through impugned judgment dated 22.03.2023, is **converted to Imprisonment for life**. However, the fine amount of Rs.1,00,000.00 [Rupees one hundred thousand] is ordered to be paid to the legal heirs of deceased as compensation provided under section 544-A Cr.P.C; in case of failure whereof, the appellant shall suffer S.I. for six months more. Benefit of Section of section 382-B Cr.P.C. is also extended in favour of appellant. **Criminal Jail Appeal No.D-33 of 2023 stands dismissed** with above modification.

15. As a result of our above findings, the reference as provided u/s 374 Cr.P.C. submitted by trial Court for confirmation of death sentence to the appellant stands disposed of in above terms.

16. Regarding the conviction and sentence awarded to the appellant for possessing the unlicensed incriminating weapon, specifically a DBBL gun, we have thoroughly examined the evidence presented by the prosecution. We conclude that the prosecution has established its case with fully consistent, cogent, reliable, independent, and confidence-inspiring evidence, beyond a shadow of a doubt. Consequently, the conviction and sentence awarded by the learned trial Court in the impugned judgment dated 22.03.2023, in crime No.

48/2020 registered at PS Faridabad, for the offense under Section 25 of the Sindh Arms Act, 2013, is **upheld**. Therefore, **Criminal Jail Appeal No. S-60 of 2023 is dismissed**. It is further clarified that the convictions and sentences awarded in the murder case and the case of recovery of the unlicensed weapon shall run concurrently.

JUDGE

JUDGE

Abdullah Channa/PS
Hyderabad dated 22.10.2024.