

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT,
HYDERABAD.**

Present:-

Mr. Justice Muhammad Iqbal Kalhoro.

Mr. Justice Zulfiqar Ali Sangi.

Criminal Jail Appeal No.D-16 of 2014

Confirmation Case No.04 of 2014

Shamoon @ Sono.

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APPELLANT.

Versus

The State.

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Respondent.

Date of hearing: 08.10.2019

08.10.2019

Date of decision: 08.10.2019

08.10.2019

Mr. Muhammad Jamil Ahmed, Advocate for appellant.

Ms. Sana Memon, Assistant P.G for the State.

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JUDGMENT

Appellant was tried by learned Additional Sessions Judge, Umerkot, in Sessions Case No.83 of 2011 arising out of Crime 86/2011 registered u/s 302 PPC, on allegation of killing his father namely Pancho Kolhi on account of non-payment of pocket money to him on 08.08.2011 at about 2030 hours inside his house, which was reported by his brother namely Mevo at P.S Kunri.

2. In the trial the prosecution has examined as many as seven (7) witnesses, who have produced all the necessary documents including F.I.R., memos of arrest and recovery etc. At the culmination of prosecution evidence, the statement of appellant u/s 342, Cr.P.C was recorded in which appellant has denied the allegation against him and has pleaded for acquittal. However, vide impugned judgment the appellant has been visited with death penalty u/s 302(a) PPC.

3. Learned defense Counsel at the very outset has submitted that he would not press this appeal on merits if conviction of the appellant is maintained, however, his sentence is converted from death penalty into

imprisonment for life u/s 302(b) PPC as firstly there is no evidence to establish offence u/s 302(a) PPC as required under the said provision of law and secondly there are multiple mitigating circumstances which justify such conversion in the sentence. Highlighting the same he has referred to the charge where it is shown that the deceased was caused injury with handle of spade, whereas, in the postmortem report the injuries are shown to have been caused to the deceased with a sharp cutting weapon. Further in the F.I.R. the appellant is alleged to have caused multiple spade injuries on the person of deceased but in the evidence the complainant and his other brother namely Haresh, who is also eyewitness, have deposed that the deceased was caused only one injury with the spade and contrary to the same postmortem report reflects two injuries with a sharp cutting weapon received by the deceased. He has further pointed out that both the eyewitnesses have deposed that the deceased had died within five (5) minutes of sustaining injuries, whereas, the Medico Legal Officer has suggested duration between death and injuries was within thirty (30) minutes enhancing considerably margin of time between death and injuries. He has also emphasized that although the crime weapon is shown to have been recovered from the appellant on next day viz. 09.08.2011, but it was not found with bloodstains and more so the said weapon was not sent for Forensic Science Laboratory's report to establish the same to be crime weapon. He has next submitted that even motive set up by the prosecution has not been established as except words of the complainant and his other brother no substantial evidence has been brought on record to prove the same. Summing up all these points, he has submitted that this is a fit case to convert death penalty into life imprisonment u/s 302(b) PPC.

4. Ms. Sana Memon learned Assistant Prosecutor General Sindh keeping in view the points raised by learned defense Counsel in his arguments has not opposed this request.

5. We have considered submissions of the parties and perused the material including evidence brought on record. As far as identity of the appellant to be culprit of the offence is concerned, it has been established by the evidence of his two real brothers who were present in the home and within their sight he had committed murder of his own father. Substitution of the real culprit in these circumstances is not possible. However, at the

same time we must observe that the points raised by learned defense Counsel in his arguments as reproduced above, which have not been disputed by learned Additional Prosecutor General Sindh, have made the case against the appellant to be of extenuating circumstances, when motive as set up by the prosecution has not been proved to the hilt and there are some discrepancies as above in the prosecution case which have not been explained, the death penalty would not be justified. We in the given facts and circumstances do not see any reason legal or otherwise to decline request of learned defense counsel for conversion of sentence from death penalty to life imprisonment u/s 302(b) PPC.

6. Resultantly, while maintaining the conviction against the appellant and dismissing this appeal on merits, we convert the sentence awarded to the appellant from death penalty u/s 302(a) PPC to life imprisonment u/s 302(b) PPC. Appellant is directed to pay compensation of Rs.1,00,000/- (one lac) to the legal heirs of deceased as required u/s 544-A, Cr.P.C, in case of default to suffer one year S.I more. However, benefit of section as provided u/s 382-B, Cr.P.C is extended to the appellant.

7. The appeal is disposed of in the above terms and the death reference in such circumstances is replied in negative and is accordingly disposed of.

JUDGE

JUDGE

Ali Haider