

PRESENTED ON
24-11-2018

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Deputy Registrar (Jud) 4292

BEFORE THE HON'BLE HIGH COURT OF SINDH AT KARACHI
(CRIMINAL APPELLANT JURISDICTION)

Criminal Appeal No. 609 Of 2018

SHAHID ALI SON OF HAJI MUHAMMAD IQBAL

Muslim, Adult, Resident of House No. 1043,
Sector-12, Saeedabad, Baldia Town, Karachi,
Presently Confined at Central Prison,
KARACHI

APPELLANT / ACCUSED

VERSUS

THE STATE

RESPONDENT

FIR NO. 103 of 2014
UNDER SECTION. 302 PPC
POLICE STATION. Saeedabad, Karachi.

CRIMINAL APPEAL UNDER SECTION 410 CRIMINAL
PROCEDURE CODE.

Being aggrieved with dissatisfied by the consolidated judgment dated 20/11/2018 passed by the learned Additional Sessions Judge-IV at Karachi West, In Sessions Case No.1013 of 2014 whereby the appellant has been convicted under section 265-H(ii) Cr.P.C for offence under Section 300 PPC, punishable under clause (b) of section 302 PPC and sentenced him to death as (Tazir) and the accused Shahid Ali Son of Muhammad Haji Iqbal be hanged by neck till his death with directions to pay Rs.5,00,000/- of fine to the complainant and his family under section 544-A Cr.P.C and in default of payment thereof, further undergo S.I for six months, the benefit of section 382-B Cr.P.C is also extended to him, Therefore appellant most respectfully

IN THE COURT OF ADDITIONAL SESSIONS
JUDGE-4, KARACHI WEST

No. ADJ-4/K/W/ 60 /2018
KARACHI Dated: 20th November, 2018

To,

The Worthy Registrar,
Honorable High Court of Sindh,
Karachi.

Subject: REFERENCE UNDER SECTION 374 CR.P.C IN
SESSIONS CASE NO.1013/2014, RE: (THE STATE
VERSUS SHAHID ALI), U/S.302 PPC, CRIME
NO.103/2014, P.S SAEEDABAD.

Accused Shahid Ali son of Haji Muhammad Iqbal has been
convicted by this Court, on 20th November, 2018 and sentenced to death in the
above Sessions Case as under:-

For offence under section 300 punishable U/S 302(b) PPC to death
as Tazir, he be hanged by neck till he is dead and under section 544-A
Cr.P.C, fine of Rs.500,000/- (Five Lac Only), if the amount is
deposited by the accused, the same be paid to the legal heir of the
deceased Waseem Akram son of Raiyat Khan, as compensation. In
default of payment of fine, the accused shall suffer S.I Six Months.
However, benefit of S.382-B Cr.PC extended.

The original record and proceedings in 02 parts are submitted herewith
duly paged along with index in pursuance of Section 374 Cr.P.C for confirmation of
death sentence, awarded to the accused/convicted Shahid Ali son of Haji
Muhammad Iqbal.

(MUHAMMAD YASIN QADRI)

IVth Addl Sessions Judge
Karachi West



IN THE HIGH COURT OF SINDH, KARACHI

Present:

*Mr. Justice Mohammad Karim Khan Agha
Mr. Justice Khadim Hussain Tunio,*

**Criminal Jail Appeal No.609 of 2018
Confirmation Case No.11 of 2018**

Appellant	Shahid Ali S/o. Haji Muhammad Iqbal through Mr. Qamar Iqbal, Advocate
Complainant	Through Mr. Jehan Zaib, Advocate
Respondent	The State through Mr. Muhammad Iqbal Awan, D.P.G.
Date of hearing	27.08.2019
Date of Announcement	30-08-2019

JUDGMENT

MOHAMMAD KARIM KHAN AGHA, J:- The appellant Shahid Ali in the instant appeal has assailed the judgment dated 20.11.2018 (the impugned Judgment) passed by Learned Additional Sessions Judge-IV, Karachi West in a Sessions Case No.1013 of 2014 arising out of Crime No.103 of 2014 U/s. 302 PPC P.S. Saeedabad, Karachi whereby the appellant was convicted under Section 265-H (ii) Cr.P.C. for commission of offence punishable under Section 302 PPC and awarded death sentence subject to confirmation by this Court. He was also directed to pay a fine of Rs.500,000/- and in default of payment he was to undergo simple imprisonment for six months more. However, the appellant was extended the benefit of section 382-B Cr.P.C.

2. The brief facts of the prosecution case are that on 09.03.2014 complainant Riyat Khan at mortuary of Civil Hospital, Karachi recorded his statement under section 154 Cr.P.C. to SIP Ghose Bux of PS Saeedabad that he along with his family is residing in his own house bearing No.568 at Sector 12/D, Saeedabad, Karachi for the last 10 years and serving as constable in police department. On 08.03.2014, he left for his duty at 08:00

a.m. and when he was returning home, he received a phone call from his family that his son Waseem Akram had left home at about 07:00 p.m. and had not returned. He called his brother Akhtar Nawaz and both of them started to search for his missing son. He was busy in search in the area of Ittehad Town at about 09:00 a.m. (09.03.2014) when he was informed through phone call that wounded dead body of his son Waseem Akram had been found in an underground water tank inside the shop known as Rashid Engineering Works near Quat-ul-Islam Masjid at Al-Saadat Chowk. He came to the place of occurrence, retrieved the dead body from the underground water tank and shifted it to Civil Hospital, hence the instant FIR was lodged with P.S. Saeedabad.

3. During investigation, accused Shahid Ali S/o. Haji Muhammad Iqbal was found involved in this incident, he was booked and on completion of investigation I.O. submitted report under section 173 Cr.P.C. against accused which was accepted by learned Judicial Magistrate, who sent up the case to the Court of learned Sessions Judge, Karachi West. The charge was framed against the accused to which he pleaded not guilty and claimed trial of the case.

4. The prosecution in order to prove its case examined 11 witnesses and exhibited various documents and other items. The statement of accused was recorded under Section 342 Cr.P.C in which he denied his involvement in the murder. He examined himself on oath and called one DW in support of his defense. After appreciating the evidence on record the trial court convicted the appellant and sentenced him as set out earlier in this judgment. Hence, the appellant has filed this appeal against conviction.

5. The facts of the case as well as evidence produced before the trial court find an elaborate mention in the impugned judgment dated 20.11.2018 passed by the trial court and, therefore, the same may not be reproduced here so as to avoid duplication and unnecessary repetition.

6. After the reading out of the evidence and the impugned judgment learned counsel for the appellant Shahid initially tried to argue the

appellants case however in the face of the overwhelming evidence against the appellant on record he decided not to press the appeal on merits but instead prayed for reduction of the sentence from the death penalty to one of life imprisonment based on the following mitigating circumstances (a) that the prosecution had neither alleged nor proven any motive as to why appellant should murder the deceased Waseem Akram and (b) the very slightest of doubt in the prosecution case although not sufficient a doubt to lead to his acquittal was enough to impose the alternate sentence of life imprisonment instead of death. In support of his contentions for a reduction in sentence from death to that of life imprisonment he placed reliance on **Muhammad Anwar V State** (2017 SCMR 630) and **Ghulam Mohyuddin V State** (2014 SCMR 1034).

7. Learned DPG contended that based on the evidence on record the prosecution had proved its case against the appellant Shahid beyond a reasonable doubt and as such the impugned judgment did not require interference. When, however, he was asked by the court whether the mitigating circumstances raised by the appellant justified a reduction in sentence both he and the learned counsel for the complainant candidly conceded that as a matter of law they did justify a reduction from the death penalty to that of life imprisonment.

8. Having gone through the evidence on record we have no doubt that the prosecution has been able to prove its case against the appellant Shahid beyond a reasonable doubt for the offenses for which he has been charged. The only issue before us is whether sufficient mitigating circumstances have been shown to justify the reduction in sentence from that of the death penalty to imprisonment for life as prayed by the appellant.

9. Generally it has been accepted by the superior courts that if the prosecution fails to prove the motive for the murder the courts are justified in imposing the alternate sentence of life imprisonment as opposed to the death penalty. Reliance in this respect is placed on the case of **Amjad Shah V State** (PLD SC 2017 P.152) where it was held as under at P.156 Para 9;

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"Notwithstanding that the participation of the appellant in the commission of offence is duly established, his intention, guilty mind or motive to commit the same remains shrouded in mystery and is therefore, unproven. In such like cases where the motive is not proved or is not alleged by the prosecution, the Court for the sake of safe administration of justice, adopts caution and treats the lack of motive as a mitigating circumstance for reducing the quantum of sentence awarded to a convict. Reference is made to Zeeshan Afzal v. The State (2013 SCMR 1602)." (bold added)

10. In our view taking into account the fact that no motive has been proved against the appellant and in taking guidance from the supreme court authority of **Ghulam Mohyuddin** (supra) where it was stressed as under whilst dealing with sentencing in a murder case in the following terms;

"Judicial caution must be exercised to award the alternative sentence of life imprisonment, lest an innocent person might not be sent to the gallows. So it is better to respect the human life, as far as possible, rather to put it at end, by assessing the evidence, facts and circumstances of a particular murder case, under which it was committed".

11. We hereby reduce the sentence of the appellant Shahid from that of the death penalty to life imprisonment and as such the confirmation reference is answered in the negative. Apart from the above variation all other fines, penalties imposed against the appellant Shahid in the impugned judgment shall remain in tact.

12. The appeal stands disposed of in the above terms.