

IN THE HIGH COURT OF SINDH, KARACHI

Present:

*Mr. Justice Mohammad Karim Khan Agha
Mr. Justice Abdul Mubeen Lakho,*

**CRIMINAL APPEAL NO.864 OF 2019
CONFIRMATION CASE NO.42 OF 2019**

Appellant	Naseeb Rawan alias Babar son of Afzal Khan through Mr. Mumtaz Khan, Advocate
Respondent	The State through Mr. Muhammad Iqbal Awan, Deputy Prosecutor General.
Complainant	Zaeem Ali through Mr. Irshad Ali Shar, Advocate
Date of Hearing	14.04.2021
Date of Announcement	21.04.2021

JUDGMENT

MOHAMMAD KARIM KHAN AGHA, J:- The appellant Naseeb Rawan alias Babar son of Afzal Khan has assailed the impugned judgment dated 07.12.2019 passed by learned Ist Additional Sessions Judge Malir/Model Criminal Trial Court (MCTC-I), Karachi in Sessions Case No.697 of 2019 arising out of Crime No.87 of 2019 under Section 302 PPC registered at PS Shah Latif Town, Karachi whereby the appellant was convicted and sentenced to death as Ta'zir under Section 302 (b) P.P.C subject to confirmation by this court. Appellant shall pay a fine of Rs.20,00,000/- (Rupees two million) under section 544-A Cr.P.C. to the legal heirs of deceased and in case of failure, he was ordered to suffer SI for six months more.

2. The brief facts of the prosecution case as per FIR are that on 02.02.2019 at about 0445 hours, inside the House of deceased, Block-B, Street No.13, Abdullah Village Shah Latif Town, Karachi one unknown accused being duly armed with firearm weapon committed Qatl-e-Amd of brother of complainant namely Zaeem Ali son of Mushtaq aged about 30 years by causing firearm injuries and

after arrest of accused Naseeb Rawan he was implicated in this case. Hence the instant FIR was registered.

3. After usual investigation and completion of all the legal formalities, 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 06 prosecution witnesses and exhibited various documents. The statement of accused was recorded under Section 342 Cr.P.C in which he denied all the allegations leveled against him. He did not give evidence on Oath or call any witness in support of his defence case. 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 07.12.2019 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 candidly conceded that the prosecution had proved the charge against the appellant beyond a reasonable doubt and the appellant had instructed him not to challenge his conviction or argue his appeal on merits but instead only to request that his sentence be reduced from the death penalty to one of Imprisonment for life based on the following mitigating circumstances (a) that he was a young man of only 24 years of age and was capable of reformation (b) that he had a family to support for which he was the sole bread winner (c) that the prosecution had failed to prove any motive for the murder (d) that by not contesting his conviction the appellant had shown genuine remorse and (e) that the attack on the deceased had not been particularly brutal as the appellant only fired one shot.

7. Learned DPG based on the mitigating circumstances put forward by the appellant raised no objection to a reduction in sentence from the death penalty to life imprisonment. Both learned counsel for the complainant and the complainant were present in court. Learned counsel for the complainant fully advised the complainant on the consequences of agreeing to a reduction in sentence including the fact that it would close any opportunity of appeal by him.

After receiving such advice both learned counsel for the complainant and the complainant informed this court that based on the mitigating factors raised by the appellant the complainant had no objection to reducing the sentence of the appellant from death to that of life imprisonment.

8. Having gone through the evidence on record and the impugned judgment we are of the view that the prosecution has proved its case against the appellant beyond a reasonable doubt in respect of the offence for which he was charged based on both oral and documentary evidence, the fact that he was identified by an eye witness whose evidence was confidence inspiring, that the murder weapon was recovered from the appellant on his arrest which when matched with the empties which were recovered from the crime scene provided a positive FSL report; that all the PW's were also consistent in their evidence and made no material contractions and had no enmity with the appellant and as such had no reason to falsely implicate him in this case. Thus the only issue before us is one of sentencing.

9. We note that sentencing is at the discretion of the court and is not a mechanical exercise. In exercising its discretion the court should consider numerous factors such as the minimum and maximum sentence which can be imposed on conviction, the role of the accused, the gravity of the offence, the amount of loss caused, whether the accused shows any kind of remorse, whether the accused is capable of reformation, the age of the appellant, the health of the appellant, his conduct in jail and how long he has already spent in jail etc. In this respect reliance is placed on **Muhammed Juman V State** (2018 SCMR 318) which held as under at P322;

"Inflicting conviction and imposing sentence is not a mechanical exercise but it is onerous responsibility to inflict, fair, reasonable and adequate sentence, commensurate with gravity and or severity of crime, looking at the motive, attending and or mitigating circumstances that provoked or instigated commission of crime and it involves conscious application of mind. No mathematical formula, standard or yard stick could be prescribed or set out to inflict conviction and sentence, such factors vary from case to case and while undertaking such exercise Court must keep in light provisions contained in Chapters-III and IV of the P.P.C. Unfortunately, no sentencing guideline is laid down in Pakistan, though Courts have set out certain parameters in many cases as to what is mitigating and or aggravating circumstances that may warrant alteration and or varying in conviction and or sentence

within the parameters provided under the charging or penal provision".

10. We find that the mitigating factors made out by the appellant do justify a reduction in sentence from the death penalty to the alternate sentence of life imprisonment keeping in the view the no objection was given by both the learned DPG and the complainant and his learned counsel to such reduction.

11. Thus, whilst taking into consideration the arguments/mitigating factors justifying a reduction in sentence of the appellant we by exercising our judicial discretion under S.423 Cr.PC maintain the appellant's conviction but modify the sentence of the appellant only to the extent that his death penalty is reduced to life imprisonment and all other punishments such as payment of compensation will remain in place.

12. The appeal stands dismissed except as modified above in terms of sentencing with the confirmation reference being answered in the negative.

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