

N THE HIGH COURT OF SINDH AT KARACHI

**SPL. CRIMINAL JAIL APPEAL NO.415 OF 2019.
CONF. CASE NO.09 OF 2019.**

Present:

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

Appellant: Muhammad Aslam s/o. Aziz Ibrahim through
Mr. Abdul Razzak, Advocate.

Respondent: The State through Mr. Muhammad Iqbal
Awan, Deputy Prosecutor General.

Date of hearing: 28.04.2021

Date of announcement: 05.05.2021

J U D G M E N T

Mohammad Karim Khan Agha, J.- Appellant Muhammad Aslam s/o. Aziz Ibrahim has preferred this criminal jail appeal against the impugned judgment dated 15.05.2019 passed by the learned Judge, Model Criminal Trial Court / Addl. District & Sessions Judge-1 (East) Karachi in Session Case No.331/2012, F.I.R. No.177/2011 u/s. 302/324 registered at P.S. Khokharapar, Karachi whereby the appellant has been convicted u/s. 302(b) PPC and sentenced to death subject to confirmation by this court. He was also required to pay compensation amounting to Rs.5,00,000/- (Rupees Five Lac) to the legal heirs of the deceased under Section 544-A Cr. P.C. Appellant was also convicted u/s.324 PPC and sentenced to seven years rigorous imprisonment with fine of Rs.100000/- (Rupees One Lac) each to be paid to the injured as required u/s.545 Cr.P.C as he was admitted to commit murder of Mst. Khursheed Bano and Rashid Ali by firing at them. In case of failure of payment of fine the accused shall further under go to simple imprisonment for six months. The appellant was also given benefit of section 382-B Cr.P.C.

2. The brief facts as narrated in the FIR lodged by complainant Shaukat Ali was that he was residing at Katchi Abadi, Ramzan Lasi Goth Khokhrapar, Karachi and his sister Sahiba Khatoon Bibi, niece Khursheeda Bibi and nephew Rashid Ali were available at their home. At about 0645 hours he heard noise of firing and came outside of his house

and found that from the house of his sister Sahiba Khatoon one Aslam son of Aziz who was son in law of Sahiba Khatoon and residing at Hub Chowki entered into the house of his sister Sahiba Khatoon and started firing upon his sister Sahiba Khatoon, niece Khursheeda Bibi and nephew Rashid Ali as a result of which they received bullet injuries and accused thereafter, escaped away from the spot on his motorcycle. Thereafter, he shifted to his sister Sahiba Khatoon, niece Khursheeda Bibi, and nephew Rashid Ali at Jinnah Hospital, but when we reached at Jinnah Hospital Karachi doctors of JPMC informed him that his sister Sahiba Khatoon had succumbed to her injuries but his niece Khursheeda Bibi and nephew Rashid Ali had received treatment for their injuries. Police official namely Muhammad Ameen arrived at the hospital, who inspected the dead body of Mst. Sahiba Khatoon as well as examined injured Rashid Ali and Mst. Khursheeda Bibi thereafter he conducted proceedings under section 174 Cr.P.C. Postmortem of deceased was conducted by WMLO Dr. Roheena Hassan. After completing legal formalities, dead body was handed over to the complainant, hence this FIR.

3. After usual investigations charge was framed against the accused person and the same was read over to him to which he pleaded not guilty and claimed trial.

4. The prosecution to prove its case examined 14 PW's who exhibited various documents and other items in support of the prosecution case where after the prosecution closed its side. The appellant/accused person recorded his statement under section 342 Cr.PC wherein he denied all the allegations leveled against him and stated that he is innocent. He was examined on Oath and also produced one witness in his defence namely Mst. Shahida whose statement was also recorded.

5. Learned Judge, Model Criminal Trial Court/Addl. District & Sessions Judge-1 (East) Karachi after hearing the learned counsel for the parties and assessment of evidence available on record, vide judgment dated 15.05.2019, convicted and sentenced the appellant as stated above, hence this appeal has been filed.

6. The facts of the case as well as evidence produced before the trial court find an elaborate mention in the impugned judgment, therefore, the

same are not reproduced here so as to avoid duplication and unnecessary repetition.

7. After the reading out of the evidence and the impugned judgment learned counsel for the appellant candidly conceded that the prosecution had proved the charges 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 29 years of age and was capable of reformation (b) that he had two young children 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) he had already served around 10 years in jail and his conduct during this period had been good.

8. It is to be noted at this stage that despite numerous efforts to serve the complainant this court was unable to do so. Under these circumstances we did not consider it fair or to meet the ends of justice to further delay hearing this appeal especially as the appellant had already been behind bars for around 10 years and the Learned DPG could adequately protect the complainants interests.

9. Learned DPG who was also representing the complainant 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 especially as he had conceded when confronted by this court that the prosecution had failed to prove any motive for the murder and attempt to murder on account of which the superior courts usually reduced the death penalty to one of life imprisonment.

10. 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 offences for which he was charged based on the prompt lodging of the FIR which left no room for fabrication through consultation; on the reliable, trustworthy and confidence inspiring evidence of 3 eye witnesses who we

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believe whose evidence was supported by the medical evidence, the recovery of empties at the scene, the police PW's and other PW's who had no enmity or ill will with the appellant and thus had no reason to falsely implicate him in this case none of whom were even dented let alone damaged during cross; that all the PW's were also consistent in their evidence and made no material contractions and we disbelieve the defence case. Thus the only issue before us is one of sentencing.

11. 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".

12. 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 that no objection was given by the learned DPG to such reduction especially keeping in view the

fact that the prosecution had failed to prove any motive for the murder and attempt to murder.

13. 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 convictions but modify the sentence of the appellant only to the extent that his death penalty is reduced to life imprisonment in respect of the murder charge and all other sentences of imprisonment (attempt to murder), punishments such as payment of compensation will remain in place. The sentences shall run concurrently and the appellant shall be entitled to the benefit of S.382 B and any remissions applicable to him under the law.

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