

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA

Crl. Jail Appeal No D 67 of 2012

Appellant Nazir Shah, through Mr. Habibullah G. Ghoun,
 Advocate,

Respondent The State, through Mr. Ali Anwar Kandhro, Additional
 Prosecutor General,

 Mr. Ahsan Ahmed Qureshi, advocate for the
 complainant.

Date of hearing : 20.03.2020

Date of decision : 20.03.2020

J U D G M E N T

ZAFAR AHMED RAJPUT, J.- Impugned in this criminal jail appeal is the judgment dated 13.06.2012, passed in Sessions Case No.153 of 2001 (Re: The State Vs. Khadim Hussain Shah & others), arisen out of Crime No.16/2001, registered at Police Station Badeh, under Sections 302, 109, 148, 149, PPC, whereby the learned Hnd. Additional Sessions Judge, Larkana, convicted the appellant for offence under Section 302(b), PPC and sentenced him to undergo imprisonment for life as Tazir and to pay Rs.100,000/- (Rupees One Lac) as compensation under Section 544-A, Cr.P.C, to the legal heirs of deceased Nadir Shah son of Chhuttal Shah, in default thereof to suffer imprisonment for six months more; the appellant was also convicted under Section 148, PPC and sentenced to suffer R.I. for three years. The sentences of imprisonment were ordered to run concurrently. However, benefit of Section 382-B, Cr.P.C was awarded to the

2. Facts in brief of the prosecution case are that, on 22.02.2011, complainant Anwar Ali Shah lodged aforesaid FIR, alleging therein that on 22.02.2001, at about 10.00 a.m. accused persons, namely, 1) Khadim Hussain Shah, 2) Nazir Shah and 3) Momin Shah, along with absconding accused Abid Shah, Ahmed Shah, Dinal Shah and two unidentified accused, duly armed with guns, appeared at graveyard situated near Village Bhaledino Shah, Taluka Dokri, where accused Abid Shah raising 'hakal' said that five months ago complainant party had poisoned his son Sabir and in order to take revenge accused have committed murder of Qamaruddin Shah yesterday and now Nadir Shah would be murdered; thereafter, Abid Shah and other accused with intention to commit murder fired upon Nadir Shah, who fell down by crying and expired; on that so many villagers were attracted and the accused persons escaped towards western side.

3. SHO P.S Bاده submitted challan in the Court of learned Judicial Magistrate, Dokri, showing accused Ahmed Shah and Khadim Hussain in custody, while accused Abid Shah, Momin Shah, Nazir Shah and Dinal Shah were shown as absconders and accused Ghulam Rasool in Column No.2 of the challan-sheet. The appellant/accused Nazir Shah was subsequently arrested and sent up to face trial.

4. Initially, the trial proceeded against accused Ahmed Shah, Khadim Hussain Shah and Nazir Shah, during which evidence of corpse bearer PC Rafique Ahmed and Dr. Aijaz Ali was recorded and they produced receipt and postmortem reports; however, during the trial proceedings accused Ahmed Shah jumped the bail and he was declared

proclaimed offender. Subsequently, accused Momin Shah joined trial by showing his voluntary appearance and was remanded to jail.

5. Accused Abid Shah, Khadim Hussain Shah, Nazir Shah and Momin Shah pleaded 'not guilty' to the amended charge (Ex.28) and claimed to be tried.

6. At trial, the prosecution examined complainant Anwar Shah at Ex.33, who produced FIR at Ex.33/A; PW Ghulam Mustafa Sahh at Ex.34; PW Dr. Aijaz Ali at Ex.35; PW Tapedar Mohammad Bachal at Ex.36, who produced sketches of vardat in triplicate at Ex.36/A and 36/B; PW Abdullah Shah at Ex.37; PW PC Rafique Ahmed at Ex.38; PW Ghulam Sarwar at Ex.39, who produced memo of place of vardat at Ex.39/A, Danistnama of deceased Qamaruddin At Ex.39/B, memo of visit of vardat at Ex.39/C, Danistnama of deceased Nadir Ali at Ex.39/D, memo of arrest of 03 accused at Ex.39/E, mem of presentation of clothes of deceased at Ex.39/F; PW Abdul Malik at Ex.40; PW SHO Manzoor Ali at Ex.41 and then the side of prosecution was closed.

6. The accused in their statements recorded u/s 342, Cr.P.C, denied the allegations, pleaded innocence and claimed to have been falsely implicated in this case. They, however, neither examined themselves on oath in terms of Section 340(2), Cr.P.C, nor led any evidence in their defence.

7. After recording of 342, Cr.P.C statements of accused, co-accused Abid Shah absconded and was declared proclaimed offender.

8. The learned trial Court after hearing the parties, handed down the impugned judgment thereby convicting and sentencing the appellant, as mentioned above, whereas co-accused Khadim Hussain Shah and Momin Shah were acquitted of the charge by extending them benefit of doubt. The appellant has challenged his conviction and sentence by filing instant appeal through jail authorities.

9. Learned Counsel for the appellant has contended that the appellant is innocent and has falsely been implicated in this case due to enmity; that co-accused Khadim Hussain Shah and Momin Shah, whose case was identical to the appellant, were acquitted by the learned trial Court by disbelieving the evidence of same set of witnesses, on the plea of *alibi*; that mashir Ghulam Sarwar did not support the prosecution during trial and was declared hostile; hence, in such circumstances, the sentence awarded to the appellant to suffer imprisonment for life may be reduced to the one which he already served. He while referring to the case of *NIAZ AHMED V. THE STATE and 2 others (PLD 2009 SC (AJ&K) 22)*, has contended that the Hon'ble Supreme Court of Pakistan under such circumstances was pleased to reduce the sentence of life imprisonment of the accused in the said case holding that the sentence of 14 years was sufficient to meet the ends of justice.

10. The learned Addl. P.G. and learned Counsel for the complainant have frankly conceded to the submission of learned Counsel for the appellant for reduction of sentence.

11. Heard learned Counsel for the appellant, learned Addl. P.G as well as learned Counsel for the complainant and scanned the available record with their assistance.


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12. It is an admitted position that the evidence of complainant Anwar Ali Shah and eyewitness Ghulam Shah has been disbelieved by the learned trial Court in respect of co-accused Momin Shah and Khadim Hussain Shah, who have been acquitted of the charge on the plea of *alibi*, while the appellant has been convicted on the same set of evidence. Apart from that, mashir Ghulam Sarwar was declared hostile and was cross-examined by the prosecutor.

13. So far the quantum of sentence of life imprisonment awarded to the appellant is concerned, it may be observed here that in a charge of murder the normal punishment provided under the law is death penalty; however, it depends upon the circumstances of each case and the quality of evidence brought on record. The learned trial Court while convicting and sentencing the appellant has taken into consideration certain mitigating circumstances, therefore, learned Counsel for the appellant instead of arguing the appeal on merits prayed for reduction of sentence of life imprisonment to the period which he has already served.

14. It appears from the jail roll of the appellant dated 21.08.2019 furnished by the Senior Superintendent, Central Prison & Correctional Facility, Larkana that the appellant has served the sentence of 15 years and 06 months upto 19.09.2019 excluding remissions and he has earned remissions for 05 years and 09 months, and hence he has served out the total sentence of 21 years and 03 months upto 19.09.2019.

15. In view of above, while considering the aforementioned facts and circumstances of the case and the fact that the appellant has already served out substantive portion of the sentence awarded to him



by the learned trial Court, it appears that the ends of justice stand satisfied. Consequently, the impugned judgment dated 13.06.2012 passed by the learned trial Court is maintained to the extent of conviction of the appellant; however, by consent the conviction recorded under Section 302(b), PPC is converted into 302(c), PPC and the sentence of life imprisonment awarded to the appellant is modified and reduced to the period, which he has already served. The appellant is confined in jail. He shall be released forthwith, if not required to be detained in any other case, however, subject to deposit of compensation amount of Rs.100,000/- (Rupees one lac) in terms of the impugned judgment.


JUDGE

Qazi Tahir PA*