

Redundant from life to death  
No motive  
Judicial Caution

## IN THE HIGH COURT OF SINDH, KARACHI

Criminal Appeal No.187 of 2018  
Confirmation Case No.04 of 2018

Present:

Mr. Justice Mohammad Karim Khan Agha  
Mr. Justice Zulfiqar Ali Sangi.

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|----------------------|---|
| Appellant            | Wajid Ali son of Abdul Khalique through Syed Kausar Ali Bukhari, Advocate |
| Respondent           | The State through Mr. Mohammad Iqbal Awan, Deputy Prosecutor General.     |
| Date of hearing      | 10.12.2019  |
| Date of Announcement | 23.12.2019  |

### JUDGMENT

**MOHAMMAD KARIM KHAN AGHA, J:-** The appellant in the instant appeal has assailed the impugned judgment dated 10.03.2018 passed by VIIIth Additional Sessions Judge, Karachi West in a Sessions Case No.1908 of 2016 F.I.R. No.220 of 2016 u/s. 302 PPC registered at P.S. Shershah, Karachi whereby the appellant was convicted under Section 265 H(ii) Cr.P.C. and awarded death sentence in pursuance of Section 302 (b) PPC, subject to confirmation by this court. He was also directed to pay a fine of Rs.5,00,000/- (Rupees Five Lac only) under Section 544-A Cr.P.C. to the legal heirs of the deceased and in default of payment of fine, the accused shall further undergo simple imprisonment for a period of 06 months more.

2. The brief facts of the case are that on 22.10.2016 complainant Zahid son of Allah Bux reported that on 21.10.2016 he along with his brothers namely Zafar Iqbal, Rashid Iqbal, Fatima Bibi (Mother) and her Bhabhi namely Saima were present in the home of their sister namely Sumeria, situated at Toor Baba Road Shershah, when the complainant asked from the mother in law of Sumeria that some guests were coming at their home, so she may allow Sumeria to go along with them to their home. On this, the mother in law of Sumeria asked them to allow her daughter namely Sajida to visit her home in exchange, thereafter, she will allow them to



take Sumeria with them. During this entire situation, the mother in law got angry and used harsh words and her brother in law namely Wajid Ali (present accused) left the home and came back at about 2245 hours and suddenly attacked Zafar Iqbal with one wooden brush / dunda, due to which Zafar Iqbal started bleeding and fell down on cot. Thereafter, on 22.10.2016 at about 0125 hours, Zafar Iqbal had died on account of such injuries at hospital. Thus, FIR was lodged against accused Wajid U/s.302 PPC. After investigation, police submitted final report against accused which was accepted by learned Magistrate and u/s. 190(2) Cr.P.C. and matter was sent to Court of Sessions for trial.

3. The charge was framed against the accused to which he pled not guilty and claimed trial of the case.

4. The prosecution in order to prove its case examined 05 PWs and exhibited a number of documents and other items. The statement of the accused was recorded under Section 342 Cr.P.C in which he denied all the allegations leveled against him and stated that he is innocent and falsely booked in this case. However, he did not record his statement under oath but examined one witness in support of his defense.

5. Learned Additional Sessions Judge No.VIII, (West) Karachi, after hearing the learned counsel for the parties and assessment of evidence available on record, vide the impugned judgment dated 10.03.2018, convicted and sentenced the appellant as stated above, hence this appeal has been filed by the appellant against his conviction.

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 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 in respect of the appellant based on the following mitigating circumstances (a) that the prosecution had neither alleged nor



proven any motive as to why the appellant should murder the deceased (b) that this was not a brutal murder as only one blow had been caused to the deceased with the dunda (c) that this was a family matter and hopefully could be resolved within the family in due course and that (d) every slightest of doubt in the prosecution case although not sufficient a doubt to lead to the acquittal of the appellant was enough to impose the alternate sentence of life imprisonment instead of death which was present in this case as there was no post mortem. In support of his contentions for a reduction in sentence from death to that of life imprisonment for the appellant he placed reliance on **Muhammad Anwar V State** (2017 SCMR 630) and **Ghulam Mohyuddin V State** (2014 SCMR 1034).

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

9. Having gone through the evidence on record we have no doubt that the prosecution has been able to prove its case against the appellant beyond a reasonable doubt for the offense for which he has been charged. In that the appellant has not disputed his presence at the scene of the offense; that the eye witnesses who knew the appellant as they were related to him gave evidence that they saw the appellant hit the deceased over the head in day light at close range in the house with the dunda who had no enmity with the accused and no reason to falsely implicate him in this case and whose evidence we find to be reliable, trust worthy and confidence inspiring; that their evidence is supported by the evidence of the PW MLO and the recovery of the murder weapon at the scene of the crime. The only issue before us therefore 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.

10. We are of the view that the prosecution has not been to prove any motive for the killing of the deceased which appeared to arise out of a family dispute on the spot. 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;

*"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)*

11. In our view taking into account the fact that no motive has been proved against the appellant and that there might be some doubts in the prosecution case albeit insufficient to lead to an acquittal such as the lack of a post mortem as to the cause of death whilst exercising judicial caution by 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;

*"A single mitigating circumstance, available in a particular case, would be sufficient to put on guard the Judge not to award the penalty of death but life imprisonment. No clear guideline, in this regard can be laid down because facts and circumstances of one case differ from the other, however, it becomes the essential obligation of the Judge in awarding one or the other sentence to apply his judicial mind with a deep thought to the facts of a particular case. If the Judge/Judges entertain some doubt, albeit not sufficient for acquittal, 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. (Bold added)*

12. We hereby uphold the conviction in the impugned judgment but whilst taking into account the above legal position on mitigating circumstances and the fact that the complainant has no objection to such a reduction in sentence who is a family member of the accused hereby reduce the sentence of the appellant 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 in sentence all other fines and penalties imposed against the appellant in the impugned judgment shall remain in tact and the appellant shall have the benefit of S.382 B Cr.PC.

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