

**IN THE HIGH COURT OF SINDH, KARACHI**

*Present:*

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

**Criminal Appeal No.347 of 2019  
Confirmation Case No.11 of 2019**

Appellant	Babar Ali Ansari son of Liaquat Ali Ansari through Mr. Moula Bux Bhutto, Advocate
Respondent	The State through Mr. Mohammad Iqbal Awan, Deputy Prosecutor General and Ms Rahat Ahsan Additional Prosecutor General.
Date of Hearing	05.05.2021
Date of Announcement	18.05.2021

**JUDGMENT**

**MOHAMMAD KARIM KHAN AGHA, J:-** The appellant Babar Ali Ansari S/o. Liaquat Ali Ansari has assailed the impugned judgment dated 30.05.2019 passed by learned Ist Additional Sessions Judge/Model Criminal Trial Court (MCTC-I), Karachi South in Sessions Case No.680 of 2012 arising out of Crime No.286 of 2012 under Section 302 & 324/PPC registered at PS Defence, Karachi whereby the appellant was convicted under section 265-H(ii) Cr.P.C. and sentenced to death subject to confirmation by this court. He was further directed under section 544-A Cr.P.C. to pay compensation to the legal heirs of deceased to the tune of Rs.3,00,000/- (Rupees Three Lac) and in case of default thereof, he was ordered to suffer SI for six months more.

2. The brief facts of the prosecution case as per FIR lodged by the complainant Muhammad Saleem son of Muhammad Shafi are that deceased Muhammad Ramzan son of Abdul Ghafoor aged about 40/45 years was doing job in Dragon Security Company situated at Phase-II

Extension, DHA Karachi and he was also residing in security company. On 25.08.2012 Manager of Security Company informed him through phone that his brother was injured in a scuffle and available at Jinnah Hospital. On such information, the complainant along with his relatives reached at Jinnah Hospital and he saw dead body of his maternal cousin Muhammad Ramzan was lying in mortuary of Jinnah Hospital in pool of blood, who was having churri injuries at his abdomen and chest. The complainant also stated that two persons whose names he came to know to be Nisar Ahmed and Rafique Ahmed both sons of Bhagal informed him and his relative Kashif Saeed s/o Saeed Arain verbally that on 25.08.2012 at about 0015 hours at night accused Babar Ali Ansari s/o Liaquat Ali Ansari came at the office of Security Company situated at Block No.76/C, 11<sup>th</sup> Commercial Street, Phase-II Extension, 3<sup>rd</sup> floor, DHA, Karachi where they all three were sleeping in office of the company and Muhammad Ramzan opened the door. Said accused attacked upon Muhammad Ramzan with churri and they tried to rescue him but the accused also caused them churri injuries but they captured the accused with crime churri and handed him over to the police, hence the complainant claimed against the appellant Babar Ali Ansari.

3. After completing all the legal formalities, IO submitted challan against accused before the concerned trial court. Thereafter a 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 and other items. 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 DW in support of his defence case.

5. 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.

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6. The facts of the case as well as evidence produced before the trial court find an elaborate mention in the impugned judgment dated 30.05.2019 passed by the trial court and, therefore, the same may not be 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, being in full knowledge that if this proposition was accepted the appellant would not be able to appeal this judgment, based on the following mitigating circumstances (a) that he was a young man of only 31 years of age and was capable of reformation (b) that he had a young family to support for which he was the sole bread winner (c) that the prosecution had failed to prove any motive for the murder which generally the superior courts had regarded as a ground for reducing the death sentence to one of life imprisonment (d) that he was a first time offender (e) that by not contesting his conviction the appellant had shown genuine remorse and (f) he had already served around 9 years in jail and his conduct during this period had been good and he had made good use of his time in jail on reformatory activities.

8. Learned APG 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 she had conceded when confronted by this court that the prosecution had failed to prove any motive for the murder on account of which the superior courts usually reduced the death penalty to one of life imprisonment.

9. 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 has been convicted based on the prompt lodging of the FIR which left no room for fabrication through consultation; on the reliable, trust worthy and confidence inspiring evidence of two injured eye witnesses whose evidence we believe; the fact that the appellant was apprehended on the spot and the murder weapon was recovered from him; that the medical evidence supported the prosecution's case and the evidence of the 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 whose evidence we also believe; 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.

10. 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".*

11. 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 APG who is also representing the complainant to such reduction especially keeping in view the fact that the prosecution had failed to prove any motive for the murder. In this respect reliance is placed on **Mst.Nazi Anwar V State** (2018 SCMR 911).

12. 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 in respect of the murder charge but all other 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 Cr.PC and any remissions applicable to him under the law.

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

  
JUDGE

  
JUDGE

18/05/21.