

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT  
HYDERABAD**

*Cr.J. Appeal No.D-66 of 2007*

**PRESENT**

*Mr. Justice Naimatullah Phulpoto*

*Mr. Justice Muhammad Karim Khan Agha.*

*Date of Hearing:* 29.05.2017

*Date of Judgment:* 30.05.2017

*Appellant/accused:* *Hamzo*  
*Through Syed Tariq Ahmed Shah, Advocate*

*The State:* *Through Syed Meeral Shah Bukhari, Addl.*  
*P.G. Sindh.*

**J U D G M E N T**

**NAIMATULLAH PHULPOTO, J:-** Appellants Hamzo and Ali Hassan were tried by learned Special Judge S.T.A. Dadu in Special Case No.110 of 1997 for offence under section 365-A, 34 PPC. By Judgment dated 24.11.2004 appellant Hamzo was convicted under section 365-A and sentenced to imprisonment for life and his property was confiscated to the Provincial Government. Co-Accused Ali Hassan was declared as proclaimed offender.

2. It appears that F.I.R. bearing crime No.26 of 1990 P.S. Johi, for offence under section 365-A and 34 PPC was registered against appellant and others. After usual investigation challan was submitted against the accused in which co-accused Ali Hassan was shown as absconder and case proceeded against him under section 512 Cr.P.C. Proceedings under section 87 & 88 Cr.P.C. were concluded against appellant Ali Hassan.

3. Trial court framed charge against the appellant under section 365-A. Accused pleaded not guilty and claimed to be tried.

4. At the trial prosecution examined six prosecution witnesses. Thereafter prosecution side was closed.

5. Statement of the accused under Section 342 Cr.P.C. was recorded in which the accused claimed his false implication in this case and denied the prosecution allegations. The accused did not lead any evidence in defence and declined to examine himself on oath in disproof of prosecution allegations and pleaded innocence.

6. Trial court after hearing the learned counsel for the parties convicted and sentenced the appellant as stated above. Hence this appeal.

7. Syed Tariq Ahmed Shah, Advocate for the appellant Hamzo did not press the appeal on merits and submitted that the appellant Hamzo was arrested in this case on 30.6.1994 and he has served excluding remissions 22 years, 10 months and 29 days and has earned remissions amounting to 16 years, 07 months and 28 days. Learned counsel for the appellant further submitted that so far life imprisonment is concerned substantive sentence/period as provided in the Rules is fifteen years and as the appellant has completed more than 15 years of his substantive sentence he should be released from custody.

8. Syed Meeral Shah Bukhari, Addl. P.G. for the State recorded no objection in case the appellant is released keeping in view the sentence which he has already undergone.

9. We have carefully heard learned counsel for the parties and considered the relevant law.

10. At the very outset it is mentioned that the conviction awarded to the appellant has not been questioned/challenged.

11. According to Rule 140 of Pakistan Prison Rules 1978, it is clear that imprisonment for life means twenty five years rigorous imprisonment and every lifer prisoner shall undergo a minimum of fifteen years substantive imprisonment.

12. According to the Jail Roll received today from Superintendent Central Prison the appellant has served 22 years 10 months and 29 days of his substantive sentence (excluding remission) and the appellant has earned remissions of 16 years, 07 months and 28 days.

13. In the view of above therefore, while maintaining the conviction, we reduce the sentence to the sentence already undergone which sentence already undergone by the appellant being well over the substantive

amount of 15 years under the jail rules would in or view meet the ends of the justice. As such conviction is maintained, sentence is reduced to already undergone. The Appellant shall be released forthwith if he is not required in some other case.

14. At this juncture learned advocate for appellant submitted that appellant has already served 22 years, 10 months and 29 days excluding remissions and he is poor person and supporter of a large family and has no previous criminal record and requested that so far complete forfeiture of his property is concerned such orders may be modified.

15. Syed Meeral Shah Bukhari, Addl. P.G. for the State recorded no objection keeping in view the fact that appellant is supporter of large family and appellant has already served 22 years in Jail the order of the complete forfeiture of the appellants property is not called for and set aside in peculiar circumstances of the case.

Appeal is disposed of in the above terms.

Hyderabad:  
Dated:30.05.2017

JUDGE

JUDGE

A.