

IN THE HIGH COURT OF SINDH, CIRCUIT COURT AT
HYDERABAD

Crl. Appeal No. D – 79 of 2008.

[Confirmation Case No.08 of 2008]

Before:

Mr. Justice Muhammad Iqbal Maher

Mr. Justice Irshad Ali Shah

Appellant: Ibrahim son of Ishaque Nohri,
through Gulamullah Chang Advocate

Respondent: The State, through Ms. Safa Hisbani, A.P.G

Date of hearing: 06-08-2019.

Date of decision: 06-08-2019.

JUDGMENT

IRSHAD ALI SHAH, J; The appellant by way of instant Criminal Appeal has impugned judgment dated 19.08.2008 passed by learned Sessions Judge, Tharparkar at Mithi, whereby the appellant has been convicted and sentenced as under;

"Therefore, accused is convicted under Section 302(b) PPC and sentenced to death. Accused shall be hanged by neck till he is dead, subject to confirmation by the Hon'ble High Court of Sindh as required under Section 374 PPC. Accused is further directed to pay compensation of Rs.2,00,000/- (rupees two lac) under Section 544-A Cr.P.C to the legal heirs of the deceased and in default to undergo six months S.I."

2. It is the case of the prosecution that appellant had committed Qatl-e-amd of his uncle Mubarak by causing him hatchet and fire shot injuries for that he was booked and challaned by the police.

3. At trial, the appellant did not plead guilty to the charge and the prosecution to prove it examined PW/1 complainant Muhammad Umer at (Ex.06), he produced FIR of the present case, PW/2 Ismail at (Ex.07), he produced his 164 Cr.P.C statement, PW/3 Muhammad Soomar at (Ex.08), he produced his 164 Cr.P.C statement, PW/4 mashir Muhammad Muqeem at (Ex. 09), he produced memo of arrest of accused, PW/5 mashir Hafeezullah at (Ex. 10), he produced memo of place of incident and dead body of deceased Mubarak, lash chakas form, Danishnama, memo of recovery of cloth of deceased Mubarak and memo of recovery of hatchet from accused, PW/6 Tapedar Allah Bachayo at (Ex. 11), he produced sketch of place of incident, PW/7 Dr. Khalid Akhtar at (Ex.12), he produced post mortem report of dead body of deceased Mubarak, PW/8 SIO / SIP Sabit Ali Shah at (Ex.14), he produced report of chemical examiner and then closed the side.

4. The appellant in his statement recorded u/s 342 Cr.P.C denied the prosecutions' allegation by stating that he being innocent has been involved in this case falsely by the complainant

party on account of previous enmity. In order to prove such enmity the appellant has produced certain documents. The appellant however, did not examine himself on oath or anyone in his defence.

5. On conclusion of the trial, learned trial Court convicted and sentenced the appellant as stated above and then made a reference to this court for confirmation of such death sentence in terms of Section 374 Cr.P.C.

6. The instant appeal and the reference made by learned trial Court for confirmation of death sentence to the appellant now are being disposed of by this Court, by way of single judgment.

7. Learned counsel for the appellant after arguing the matter at length was fair enough to say that he would not press the disposal of instant appeal on merit, if the death sentence awarded to the appellant is modified into imprisonment for life with reduction of compensation by taking into consideration the mitigating circumstance of the case.

8. Learned A.P.G for the State recorded no objection for modification of the death sentence into imprisonment for life with reduction of compensation.

9. We have considered the above arguments and perused the record.

10. There is no dispute with regard to the death of the deceased Mubarak being un-natural. The appellant is named in FIR with specific allegation that he has committed death of deceased Mubarak by causing him hatchet and fire shot injuries. Complainant Muhammad Umer is not an eye-witness of the incident. However, PWs Ismail and Muhammad Soomar during course of their examination were fair enough to state that it was the appellant who after having a quarrel with deceased Mubarak committed his Qatl-e-amd by causing him hatchet and fire shot injuries. Both of the witnesses have stood by their version on all material points despite lengthy cross examination and they have rightly been believed by learned trial Court. On arrest from appellant has been secured the country made pistol and hatchet by SIO / SIP Sabit Ali Shah, which the appellant has allegedly used in commission of the alleged incident. In these circumstances, learned trial Court was right to conclude that the prosecution has been able to prove its case against appellant beyond shadow of doubt.

11. However, the sentence of death awarded to the appellant is calling for modification for the reason that the appellant and the complainant party are closely related interse, there was no

deep rooted enmity between them, as such the death sentence awarded to the appellant is modified with rigorous imprisonment for life with compensation of Rs.100,000/-(One Lac) payable to legal heirs of deceased Mubarak and in case of failure of the appellant to make payment of compensation, he would undergo simple imprisonment for three months with benefit of Section 382-B Cr.P. C.

12. In case of **Ghulam Mohiuddin alias Haji Babu & ors Vs. The State (2014 SCMR-1034)**, it has been observed by the Honourable Supreme Court that;

"---S.302(b)---Qatl-e-amd---Sentence---Death sentence or imprisonment for life—Single mitigating circumstance—Sufficient to award life imprisonment instead of death penalty---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--If a single doubt or ground was available, creating reasonable doubt in the mind of Court/Judge to award either death penalty or life imprisonment, it would be sufficient circumstance to adopt alternative course by awarding life imprisonment instead of death sentence---No clear guideline, in such regard could be laid down because facts and circumstances of one case differed from the other, however, it became 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 entertained 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---Better to respect human life, as far as possible, rather than to put it at end, by assessing the evidence, facts and circumstances of a particular murder case, under which it was committed".

13. The instant criminal appeal and death reference are disposed of in above terms.

Judge
Judge

Ahmed/Pa