

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD**  
**Criminal Appeal No.D- 78 of 2016**  
**{Confirmation Case No.14 of 2009}**

**Before;**

Mr. Justice Muhammad Iqbal Mahar  
Mr. Justice Irshad Ali Shah

**Appellant:** Niaz Hussain alias Jagoo,  
Through Mr. Omparkash H. Karmani,  
Advocate

**State:** Ms. Sana Memon, A.P.G

**Date of hearing:** 04.09.2019

**Date of decision:** 04.09.2019

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

**IRSHAD ALI SHAH, J.** The facts in brief necessary for disposal of instant appeal are that the appellant with unknown culprit in furtherance of their common intention not only committed murder of his sister Mst. Farzana, but caused fire shot injuries to complainant Mst. Sanam alias Asia with intention to commit her murder too, for that he was booked and reported upon.

2. At trial, the appellant did not plead guilty to the charge and prosecution to prove it examined complainant Mst. Sanam alias Asia and her witnesses and then closed the side.

3. The appellant in his statement recorded u/s 342 Cr.P.C denied the prosecutions' allegation by pleading innocence, he did not

examine himself on oath or anyone to disprove the prosecution allegation against him.

4. On evaluation of evidence so produced by prosecution the learned IIIrd Additional Sessions Judge, Shaheed Benazirabad vide judgment dated 19.07.2016, convicted and sentenced the appellant as under;

“Therefore he is awarded sentence of death u/s 302 (a) PPC. He should be hanged by the nek till his death. He is also convicted and sentenced for 7 (seven) years u/s 324 PPC for causing fire arm injuries to complainant and he has to pay compensation of Rs.100,000/-to the injured complainant u/s 544-A Cr.P.C. In case of failure to pay compensation he has to undergo for one year more imprisonment.”

5. Learned trial court then made a reference to this court for confirmation of death sentence awarded to the appellant. Simultaneously, the appellant has also preferred an appeal before this court, whereby he impugned the above said judgment; those are now being disposed of through instant single judgment.

6. After arguing the appeal at some length, it was stated by learned counsel for the appellant that he would not press the disposal of instant appeal on merits, if death sentence, which is awarded to the appellant is converted into life imprisonment with benefit of Section 382-B Cr.P.C.

7. Learned A.P.G for the State sought for dismissal of the appeal of the appellant by supporting the impugned judgment.

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

9. It is true that the complainant is only eye witness of the incident, she being injured was admitted in hospital; it is why she lodged FIR of the incident with delay of about four days. It is specifically stated by the complainant that she and Mst. Farzana after making purchase were going back to their house, they were confronted by the appellant and one unknown culprit, the appellant fired at her and Mst. Farzana. Mst. Farzana died at the spot after sustaining fire shot injuries while she was taken to hospital in injured condition. By stating so, she fully implicated the appellant in commission of incident. Whatever is stated by the complainant takes support from the ancillary evidence. The complainant and her witnesses have stood by their version on all material points despite cross examination and they have rightly been believed by learned trial court by making a conclusion that the prosecution has been able to prove its case against appellant beyond shadow of doubt.

10. However, the sentence of death which is awarded to the appellant is calling for its modification for the reason that there was no enmity between the parties, there is no recovery of crime weapon from the appellant and the complainant is the only eye witness of the incident, as such the death sentence which is awarded to the

appellant as 'Qisas' for an offence punishable u/s 302(a) PPC is modified for an offence punishable u/s 302 (b) PPC with rigorous imprisonment for life as 'Tazir' by having regard to the facts and circumstances of the case. Punishment awarded to the appellant u/s 324 PPC would remain same. All the sentences awarded to the appellant to run concurrently with benefit of section 382-B Cr.P.C.

11. 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”.*

12. The criminal appeal and death reference are disposed of accordingly.

**J U D G E**

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