

IN THE HIGH COURT OF SINDH, KARACHI

**Special Criminal Anti-Terrorism Appeal No.108 of 2019
Confirmation Case No.05 of 2019
Special Criminal Anti-Terrorism Appeal No.126 of 2019**

Present:

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

Appellants : 1. Mohsin Baloch s/o Haji Hassan
through Mr. Mushtaq Ahmed, Advocate
: 2. Abid Kaloo s/o Dur Muhammad
through Mr. Aswad Ali Chohan, Advocate
Respondent : The State
Through Mr. Muhammad Iqbal Awan,
Deputy Prosecutor General, Sindh
Date of Hearing : 28.04.2020
Date of Judgment : 13.05.2020

J U D G M E N T

ZULFIQAR ALI SANGI, J:- Accused Mohsin Baloch s/o Haji Hassan and Abid @ Kaloo s/o Dur Muhammad were tried by the learned Judge, Anti-Terrorism Court No.IV, Karachi Division, in Special Case No.A-116 of 2012 arising out of Crime No.47/2012, U/s. 302/109/34 PPC r/w 7 ATA 1997, registered at P.S. Malir City Karachi, Special Case No.A-116/A of 2012 (*old Special Case No. A-117 of 2012*) arising out of Crime No.83/2012, U/s. 353/324/302/427/34 PPC r/w. 7 ATA, 1997, registered at PS Malir City Karachi and Special Case No.A-116/B of 2012 (*old Special Case No. A-118 of 2012*) arising out of Crime No.84/2012, U/s. 13-A Arms Ordinance, registered at PS Malir City Karachi. After trial through the impugned judgment dated 15.04.2019 the appellants named above were convicted and sentenced as under:-

1. Convicted accused Mohsin Baloch s/o Haji Hassan and Abid @ Kaloo Baloch s/o Dur Muhammad for offence u/s 302(b) PPC and sentenced them to death subject to confirmation by this court and to pay a sum of Rs.1,00,000/- (Rupees one hundred thousand) each, as compensation u/s 544-Cr.P.C. to the legal heirs of the deceased, which shall be recovered by way of arrear of land revenue and in default of payment/recovery thereof undergo simple imprisonment for six months each.
2. Convicted accused Mohsin Baloch s/o Haji Hassan and Abid @ Kaloo Baloch s/o Dur Muhammad for offence u/s 7 (1) (a) of ATA, 1997 and sentenced them to death subject to confirmation by this court and to

pay Rs.1,00,000/- (Rupees one hundred thousand) as fine and in case of default in payment of fine, they shall further suffer simple imprisonment of six months.

3. The death sentence is given on two counts i.e. section 302-PPC and section 7 (1) (a) of ATA, 1997.
4. Convicted accused Abid @ Kaloo Baloch s/o Dur Muhammad for offence u/s 353/34-PPC r/w Section 7 (h) of ATA, 1997 and sentenced to suffer for five years imprisonment and fine of Rs.10,000/- (Rupees ten thousand), in case of default in payment of fine he shall further suffer six months more.
5. Convicted accused Abid @ Kaloo Baloch s/o Dur Muhammad for offence u/s 324/34-PPC r/w Section 7 (h) of ATA, 1997 and sentenced to suffer for five years imprisonment, and fine of Rs.10,000/- (Rupees ten thousand), in case of default in payment of the fine he shall further suffer six months more.
6. Convicted accused Abid @ Kaloo Baloch s/o Dur Muhammad for offence u/s 427-PPC and sentenced to suffer for one (01) year.
7. Convicted accused Abid @ Kaloo Baloch s/o Dur Muhammad for offence u/s 13-A of Pakistan Arms Ordinance 1965 and sentenced to suffer for seven (07) years imprisonment and fine of Rs.10,000/- (Rupees ten thousand), in case of default in payment of the fine he shall further suffer six months.

All the sentences by way of imprisonment were ordered to be run concurrently. The Benefit of Section 382(B) of Cr.P.C. was also been extended to them.

2. Being aggrieved and dissatisfied by the judgment passed by learned Judge, Anti-Terrorism Court No.IV, Karachi, the aforesaid appeals have been preferred by the appellants and the confirmation reference has also been made by the trial court in compliance of S. 25 (2) of the ATA,1997.

3. The brief facts of the prosecution case are that on 24.03.2012, at 0845 hours, complainant Syed Kazim Raza, lodged FIR No.47/2012, U/s: 302/109/34 PPC r/w section 7 of ATA 1997 at Malir City Karachi stating therein that on the day of the incident he was available in his house while his father Syed Salahudin Hyder and his brother Syed Ali Raza Advocates were going to Court on Rikshaw No.D-16865 at Ghazi Town Road, adjacent Bakra Piri, near Speed Breaker where unknown accused persons made fires upon them and they were taken to Jinnah hospital where they succumbed to their injuries and died.

4. Thereafter, on 27.04.2012 at 2230 hours, I.O/Inspector Muhammad Ismail Lashari arrested accused Mohsin Baloch, who during interrogation admitted his guilt and led the police party at the house of deceased accused Fida @ Fido Maliri, situated in Salar Village where an encounter took place and during such encounter PC Pervez Iqbal, PC Khan Muhammad, PC Sabir

Ali and Inspector Ismail Lashari sustained bullet injuries and later on PC Pervez Iqbal succumbed to his injuries. After the encounter police arrested co-accused Abid @ Kaloo Baloch whilst his other companion made his escape good from the scene. Inspector Muhammad Ismail Lashari conducted the personal search of the accused Abid @ Kaloo Baloch and recovered one KK without a license along with 20 live bullets and arrested the accused and lodged FIR No.83/2012 u/s 353/324/302/427/34-PPC r/w Section 7 ATA 1997 and registered the separate FIR No.84/2012 U/s: 13-(A) of Pakistan Arms Ordinance, 1965. After completing the investigation he submitted the challan before the competent court of law. Learned trial court on the application of DDPP u/s 21 of ATA, 1997, and following no objection by the counsel of the accused framed joint charge against the accused persons to which they pleaded not guilty and claimed their trial.

5. The prosecution to prove its case against the appellants examined 14 prosecution witnesses and exhibited numerous documents and other items in support of its case and thereafter the side of the prosecution was closed. Statements of the accused under section 342 Cr.P.C were recorded in which they denied all the allegations leveled against them and pleaded false implication.

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 is not reproduced here so as to avoid duplication and unnecessary repetition.

7. Learned counsel for the appellants after arguing the appeals at some length did not press the instant appeals on merit having accepted that the prosecution had proved its case against them beyond a reasonable doubt but instead prayed for a reduction in sentence from death to imprisonment for life on the grounds that (a) the prosecution has failed to establish motive and the same was not set up by the prosecution, (b) that there is no direct role against the appellants for firing on the deceased and the role alleged in the FIR is general in nature and (c) they have committed these murders on the instigation of one Fidoo Maliri Baloch and, (d) although the prosecution has proved its case against them beyond a reasonable doubt it is a fit case for a

reduction in sentence. They jointly relied upon the cases of **Atta-ur-Rehman and another vs. The State** (2018 SCMR 372), **Ali Bux and others vs. The State** (2018 SCMR 354), **Muhammad Abbas vs. The State and others** (2018 SCMR 397), **Tahir Mehmood @ Achoo vs. The State and another** (2018 SCMR 169), **Azeem Khan and another vs. Mujahid Khan and others** (2016 SCMR 274), **Amjad Shah vs. The State** (PLD 2017 Supreme Court 152), **Shakir Muhammad alias Shakeel and another vs. The State** (2019 P.Cr.L.J Note 120), **Haroon Rashid and 4 others vs. Muhammad Yousaf Afridi and 3 others** (2019 P Cr.L.J. 1480), **Asghar shah vs. The State** (2019 YLR 441) and **Jameel and another vs. The State** (2019 YLR 516).

8. Conversely, learned Deputy Prosecutor General submitted that the prosecution had proved its case against the appellants beyond a reasonable doubt but conceded to the submission of counsel for the appellants for the conversion of death sentence to imprisonment for life based on the grounds which they had raised which grounds had been approved of by the supreme court for reducing a death sentence to that of life imprisonment.

9. We have heard learned Counsel for the parties and have examined the record carefully with their able assistance and considered the relevant law including that cited at the bar.

10. On our reassessment of evidence, we have found that the prosecution has proved its case against the appellants beyond a reasonable doubt by producing reliable, trustworthy, and confidence-inspiring evidence. The ocular evidence is supported by medical evidence and the confessional statements of the appellants recorded before the Judicial Magistrate. Therefore the issue before us is only as to whether the death sentence awarded to the appellants can be converted in to imprisonment for life or not on the basis of the submissions made by the learned counsel of the appellants.

11. The normal penalty is a death sentence for murder; however, once the Legislature has provided for awarding alternative sentence of life imprisonment, it would be difficult to hold that in all cases of murder, the death penalty should be applied. If the intent of the Legislature was to take away the discretion of the Court, then it would have omitted from clause (b) of section 302, P.P.C. being the alternative sentence of life imprisonment. As

such the court must carefully exercise in desertion in determining whether to award the death sentence or life imprisonment based on the particular facts and circumstances of each case. A single mitigating circumstance, available in a particular case, would be sufficient for not awarding the penalty of death but life imprisonment 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 than putting it at an end, by assessing the evidence, facts and circumstances of a particular murder case, under which it was committed as has been held by Honourable Supreme Court of Pakistan in case of **GHULAM MOHY-UD-DIN alias HAJI BABU and others V. The STATE (2014 S C M R 1034)**.

12. It is settled by now that if the prosecution asserts a motive but fails to prove the same then such failure on the part of the prosecution may react against a sentence of death passed against a convict on the charge of murder and lead to the alternate sentence of life imprisonment being awarded. In the present case the motive has not been set up by the prosecution nor the same proven. Likewise it is settled by now that if it is unclear who out of a number of appellants fired upon and caused the fatal shot to the deceased persons and committed their murder as in this case the alternate sentence of life imprisonment is generally imposed. In this respect reliance is placed on the cases of Ahmad Nawaz and another v. The State (2011 SCMR 593), Iftikhar Mehmood and another v. Qaiser Iftikhar and others (2011 SCMR 1165), Muhammad Mumtaz and another v. The State and another (2012 SCMR 267), Muhammad Imran alias Asif v. The State (2013 SCMR 782), Sabir Hussain alias Sabri v. The State (2013 SCMR 1554), Zeeshan Afzal alias Shani and another v. The State and another (2013 SCMR 1602), Naveed alias Needu and others v. The State and others (2014 SCMR 1464), Muhammad Nadeem Waqas, and another v. The State (2014 SCMR 1658), Muhammad Asif v. Muhammad Akhtar, and others (2016 SCMR 2035) and Qaddan and others v. The State (2017 SCMR 148).

13. Thus for all the above reasons we have decided to exercise judicial caution in the matter of the appellant's sentence of death and have felt persuaded to reduce the said sentence of death to imprisonment for life keeping in view the fact that the DPG also had no objection to such a reduction in sentence based on the particular facts and circumstances of the case and the relevant law. These appeals are, therefore, dismissed and the conviction of the appellants on the charge under section 302(b), P.P.C so also under section 7(1) (a) ATA, 1997, are maintained but these appeals are partly allowed to the extent of the appellant's sentence of death which is reduced to imprisonment for life on two counts. Compensation, as ordered by the trial court in terms of section 544-A Cr.P.C is maintained; in default of payment of compensation, the sentence awarded by the trial court is also maintained. All other sentences awarded by the trial court as stated above are also maintained. Appellants are entitled to the benefit of section 382-B Cr.P.C and all the sentences are ordered to run concurrently. The confirmation case No: D- 05 of 2019 made by the trial court against the appellants is answered in the negative.

14. The confirmation reference No. 05 of 2019, made by the trial court and the Special Criminal Anti-Terrorism Appeals No.108 and 126 of 2019 filed by the appellants are disposed of in the above terms.

J U D G E

J U D G E