

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

Cr. Jail Appeal No.D-60 of 2013
Confirmation Reference No.19 of 2013

Present:

***MR. JUSTICE NAIMATULLAH PHULPOTO
JUSTICE MRs. RASHIDA ASAD***

Date of hearing: 08.09.2020

Date of decision: 23.09.2020

Appellant: Ahmed Nawaz Mugheri
through Mr. Shabeer Hussain Memon,
Advocate.

Respondent: The State,
through Mr. Shahzado Saleem Nahiyoon,
D.P.G.

J U D G M E N T

RASHIDA ASAD, J.— Convict-appellant Ahmed Nawaz, was tried by the III-Additional Sessions Judge, Shaheed Benazirabad in S.C.No.465/2009 arising out of Crime No.112/2009 registered at P.S. Airport for offence under Sections 302/34 P.P.C. and by judgment dated 26.08.2013, he was convicted under section 302(a), P.P.C. and sentenced to death, subject to the confirmation by this Court with direction to pay compensation of Rs.200,000/- to the legal heirs of the deceased as required under Section 544-A Cr.P.C.

2. Prosecution case against the appellant, as divulged from the contents of FIR, registered on the statement of complainant Sajjan Mugheri are that on the fateful day and time, he was present at his house along with his brothers namely Muhammad Bux and Imamuddin, when accused Ahmed Nawaz armed with country made pistol along

with his brothers Ali Ahmed, Muhammad Nawaz and Amanullah armed with pistols entered into the house and accused Ahmed Nawaz inquired from his wife Mst. Shahnaz about complainant. His wife replied that they had restrained him to visit, so why he had come. On which, accused Ahmed Nawaz made direct fire at his wife which hit on her forehead and she fell down, thereafter accused went away and complainant brought the injured at PMCH, Nawabshah where she was kept in ICU. Then complainant went to PS and lodged F.I.R. It was recorded on 25.11.2009 at 1930 hours vide Crime No.112/2009, under section 324, 34 P.P.C. at P.S. Airport, District Shaheed Benazirabad. Investigation Officer visited the place of incident on the pointation of complainant in presence of mashirs. During medical treatment on 30.11.2009 injured Mst. Shahnaz succumbed to her injuries and expired in ICU ward of PMCH, Nawabshah. After postmortem examination, her dead body was handed over to complainant. During investigation, accused Ahmed Nawaz was arrested and police recovered country made pistol from his possession while co-accused were never arrested and were declared proclaimed offenders.

3. Trial Court framed the charge against the accused at Ex.5, to which he pleaded not guilty and claimed to be tried.

4. At the trial, prosecution examined nine (09) P.Ws and exhibited numerous documents. Thereafter, prosecution closed the side at Ex.17.

5. Statement of accused u/s 342 Cr.P.C. was recorded at Ex.18, in which the accused denied the allegations of prosecution and professed his innocence. However, he neither examined himself on oath in

disproof of the prosecution allegations nor examined any witness in his defence as required u/s 340(2), Cr.P.C.

6. Learned trial court vide its judgment dated 26.08.2013, found the appellant guilty, convicted and sentenced him to death as mentioned above and made reference to this court for confirmation of death sentence. The appellant has preferred Criminal Jail Appeal against the said judgment. Being bound by a common thread, we intend to dispose of both the Criminal Jail Appeal as well as Confirmation Reference made by the learned trial Court through this single judgment.

7. Learned counsel for the appellant after going through the evidence submitted that he would not press this appeal on merits, if sentence of death is converted to imprisonment for life, secondly there are multiple mitigating circumstances which justify such conversion in the sentence.

8. Learned D.P.G contended that based on the evidence on record the prosecution has proved its' case against the appellant beyond a reasonable doubt and as such the impugned judgment did not require interference. However, when he was asked by the court whether the motive as alleged by the prosecution has been proved at trial, he conceded that motive remained shrouded in mystery and did not raise objection if the death sentence is converted to imprisonment for life.

9. After hearing the learned counsel for the parties and perusal of available record, it has been observed by us that the incident allegedly took place at 6:30 p.m., in the house of the complainant,

which was witnessed by P.Ws Muhammad Bux and Imamuddin. The matter was reported to police on the same day at 7:30 p.m., i.e. within one hour of the occurrence, Neurosurgeon Dr. Shamas Raza Brohi operated the injured wife of the complainant but she succumbed to her injuries on the fifth day of the incident. Dr. Rehana Parveen conducted postmortem of the deceased and opined that deceased had died due to gunshot injury at head causing depressed fracture of left frontal bone damage of main vital organ brain, hemorrhage and shock leading to cardio respiratory failure. No question was raised regarding the efficiency and integrity of Doctor. Therefore, we are of the view that the deceased died her unnatural death as described by the W.M.O. The ocular account in this case was furnished by complainant Sajjan and P.W Muhammad Bux. They have given sufficient explanation for their presence at the spot at the relevant time. Both these witnesses by and large remained consistent on all the material aspects of the case such as place of incident, time and weapon used and hold the appellant was responsible for causing fire-arm injury on the forehead of deceased Mst. Shahnaz (deceased). In these circumstances, we have no manner of doubt in our mind that the prosecution has proved its' case against the appellant beyond reasonable doubt.

10. As regards to the quantum of sentence is concerned, there are number of circumstances, which favour the case of appellant for reduction in the quantum of his sentence. Firstly, only a single fire on the person of deceased is attributed to him. It is, an admitted fact that he did not repeat the fire. Secondly, a specific motive was

alleged by the prosecution inasmuch as some time prior to the occurrence, the complainant had forbidden the accused from visiting his house and on the day of incident the accused along with co-accused entered into the house of the complainant and asked from his wife about the complainant and on her asking that as to why they have come to their home when they were restrained, the appellant committed the offence. On our own independent assessment, it has been observed by us that there is no detail as to why the appellant was forbidden from visiting the house of the complainant; whether there was any previous enmity or ill will between the parties, which ignited the accused to visit the house of the complainant and commit the offence. No other independent piece of evidence has been produced by the prosecution during trial to substantiate this claim. It is settled law 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 a reference in this respect may be made to the cases of Ahmad Nawaz v. The State (2011 SCMR 593), Iftikhar Mehmood and another v. Qaiser Iftikhar and others (2011 SCMR 1165), Muhammad Mumtaz 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).

11. We have observed that the learned trial Court convicted the appellant under section 302(a), P.P.C. without such evidence and awarded him death penalty, which is erroneous in law. In a case of Qatl-i-amd liable to death by Qisas, the requirement is that the witness must stand the test of *Tazkiya-tul-Shahood* as held in the case of **Manzoor and others v. The State and others (1992 SCMR 2037)**. In the present case, *Tazkiya-tul-Shahood* tests of eye-witnesses were not done, therefore, the sentence under section 302(a), P.P.C. is not sustainable in law.

12. For the reasons as discussed above, this Cr. Jail Appeal No.D-60 of 2013 is dismissed to the extent to appellant`s conviction for offence u/s 302(b) P.P.C. but the same is partly allowed to the extent of death sentence which is reduced to imprisonment for life as Ta`zir. The order of compensation passed by learned trial court would remain intact, however, since no sentence of imprisonment is passed by the learned trial Court in case of default in payment of compensation, therefore, it is ordered that in case of default in payment of compensation, the appellant shall suffer S.I for six months. The benefit of Section 382-B Cr.P.C is also extended to the appellant. Confirmation Reference No.19 of 2013 made by the trial court for confirmation of the death sentence is answered in **NEGATIVE** and death sentence is **NOT CONFIRMED**.

JUDGE

JUDGE

