

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

**Crl. Appeal No. D – 87 of 2014
Confirmation Case No.21 of 2014**

Before;

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

Appellant: Muhammad Sharif son of Rehmat Ali
through Mr. Mian Taj Muhammad Keerio,
Advocate

Respondent: The State, through Ms. Sana Memon, DPG

Date of hearing: 07-10-2019.

Date of decision: 07-10-2019.

J U D G M E N T

IRSHAD ALI SHAH, J; The appellant by way of instant appeal has impugned judgment dated 30.08.2014 passed by learned Sessions Judge, Sanghar whereby the appellant for an offence punishable u/s 302(b) PPC has been awarded **death** penalty subject to confirmation by this Court with compensation of Rs.200,000/=payable to the legal heirs of deceased Umed Ali, and in case of his failure to make payment of compensation to undergo Simple Imprisonment for six months.

2. The facts in brief necessary for disposal of instant appeal are that the appellant and co-accused Allahdito (since acquitted) in furtherance of their common intention committed Qatl-e-Amd of

deceased Umed Ali in order to satisfy their grudge with him over the issue of kid fight for that they were booked and reported upon.

3. At trial, the appellant and co-accused Allahdito (since acquitted) did not plead guilty to the charge and prosecution to prove it examined complainant Muhammad Rafique and his witnesses and then closed the side.

4. Appellant and co-accused Allahdito (since acquitted) at trial denied the prosecution allegation by pleading innocence and they in order to prove their innocence examined Muhammad Saqib, Mirza Tariq, Naseer and Muhammad Hanif in their defence.

5. On evaluation of evidence so produced by the prosecution, learned trial Court has acquitted co-accused Allahdito while convicted and sentenced the appellant as stated above and then has made a reference before this Court for confirmation of death sentence to the appellant.

6. Both, the appeal preferred by the appellant and reference made by learned trial Court now are being disposed of by this Court by way of instant judgment.

7. At the very outset, it was stated by learned counsel for the appellant that he would not press the disposal of instant appeal on merit, if the death sentence is modified to that of imprisonment of life by considering the mitigating circumstances of the case.

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

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

10. Complainant Muhammad Rafique, PW Abdul Jabbar and Muhammad Hanif were unanimous in their version that on the date of incident at the shop of deceased Umed Ali there came co-accused Allahdito (since acquitted) and the appellant and by causing hatchet blows to Umed Ali committed his Qatl-e-Amd. They have been stood by their version on all material points and whatever they have stated, take support from the confessional statement of the appellant which he has allegedly made before Judicial Magistrate. On arrest, from the appellant has also been secured the incriminating hatchet and in these circumstances, learned trial Court was right to hold the appellant to be guilty for the above said offence.

11. However, the sentence of death which is awarded to the appellant for the above said offence is calling for its modification for the reason that there was no deep rooted enmity between the parties, as such the death sentence awarded to the appellant is modified with rigorous imprisonment for life with compensation of Rs.50,000/-(rupees fifty thousand) payable to the legal heirs of

deceased Umed Ali and in case of his failure to make payment of compensation, the appellant 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