

IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD
Criminal Jail Appeal No.D-17 of 2014
{Confirmation Case No.05 of 2014}

Before;

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

Appellants: Qurban Ali @ Qaboo S/o Khamiso, Mubarak
@ Makboo S/o Khamiso & Nabi Bux @ Nabo
S/o Khamiso Leghari
Through Mr. Muhammad Saleem Leghari
advocate

Complainant: Haq Nawaz
Through Mr. Waqar Ahmed Memon
advocate

State: Ms. Rameshan Odh, A.P.G

Date of hearing: 05.11.2019

Date of decision: 05.11.2019

J U D G M E N T

IRSHAD ALI SHAH, J. The facts in brief necessary for passing the instant judgment are that the appellants allegedly in furtherance of their common intention not only committed Qatl-e-Amd of Shadi Khan and Gul Muhammad but fired at complainant Haq Nawaz with intention to commit his murder too for, that they were booked and reported upon.

2 At trial, the appellants did not plead guilty to charge and prosecution to prove it; examined at least ten witnesses including complainant Haq Nawaz and then closed the side.

3. The appellants during course of their examination u/s 342 Cr.PC denied the prosecution allegation by pleading innocence. They did not examine anyone in their defence or themselves on Oath to disprove prosecution allegation.

4. On conclusion of the trial, the appellants were found guilty for the aforesaid offence, therefore, by judgment dated 29.01.2014 were convicted and sentenced as under by learned trial Court:

“1- **U/s 302(b) r/w section 34 PPC:**

As the fatal shot fired by accused Qurban Ali caused death of deceased Gul Muhammad and fatal shot fired by accused Mubarak caused death of deceased Shadi Khan, they deserves no leniency and sentenced to death, as Ta’zir. They may be hanged by neck till they are dead. Accused Nabi Bux was also with them in furtherance of common intention and he has also made firing at that time, but his fire did not hit the deceased, therefore, he is sentenced to suffer R.I for life.

2- **U/s 324 r/w section 34 PPC:**

As accused Nabi Bux fired a shot upon complainant Haq Nawaz in a manner if committed the Qatl-e-Amd, therefore, he is sentenced to suffer R.I for 07 years. Accused Qurban and Mubarak were with him in furtherance of their common intention and had also fired at that time, therefore, they are also sentenced to suffer R.I for 05 years each. The accused are also required to pay fine of Rs.10,000/- each. In case of failure to pay fine, they are sentenced to suffer S.I for 06 months more.”

5. The appellants by way of instant appeal have impugned the above said judgment while learned trial Court had made a reference u/s 374 Cr.P.C for confirmation of death sentence, which are now being disposed by way of instant judgment.

6. After advancing the arguments at some length, learned counsel for the parties were fair enough to say that they would be having no objection, if appellant Nabi Bux @ Nabo is acquitted of offence for which he is charged and death sentence awarded to appellants Qurban Ali @ Qaboo and Mubarak @ Makboo is modified into rigorous imprisonment of life, by taking the mitigating circumstances of the case into consideration.

7. Admittedly, the role attributed to appellant Nabi Bux @ Nabo in commission of incident is only to the extent that he fired at complainant Haq Nawaz with intention to commit his murder, such fire proved to be ineffective. Ineffective could hardly be made with intention to commit murder of someone. On arrest, nothing has been secured from him. His involvement in this case, on the basis of ineffective firing at the complainant in the circumstances is appearing to be doubtful one. In that context, learned counsel for the parties have rightly consented for his acquittal. He is acquitted of the offence, for which he is charged. He shall be released forthwith, in the present case.

8. So far case of appellants Qurban @ Qaboo and Mubarak @ Makboo is concerned, it is different. As per complainant Haq

Nawaz, PWs Lal Bux and Mir deceased Shadi Khan and Gul Muhammad were killed by them (Qurban @ Qaboo and Mubarak @ Makboo) by causing fire shot injuries. They have stood by their version to that extent, successfully, despite lengthy cross examination. On arrest, from appellant Qurban @ Qaboo has also been secured country made pistol of 12 bore, allegedly used in commission of incident and it has been found similar with one of the empty secured from the place of incident. In these circumstances it could be concluded safely that the prosecution has been able to prove its case successfully against appellants Qurban Ali @ Qaboo and Mubarak @ Makboo beyond shadow of doubt.

9. So far, death sentence to appellants Qurban @ Qaboo and Mubarak @ Makboo is concerned, it requires to be modified simply for the reason that there was no deep rooted enmity between the parties and dispute between them was over landed property and learned counsel for the parties have consented for such modification of sentence, which we think they have rightly consented in the circumstances of the case.

10. 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”.

11. In view of above, the death sentence awarded to appellants Qurban Ali @ Qaboo and Mubarak @ Makboo for an offence punishable u/s 302(b) PPC for having committed Qatl-e-Amd of Shadi Khan and Gul Muhammad (on two count) is modified into Rigorous Imprisonment for life with fine of Rs.50,000/- payable by each of them to legal heirs of each of the deceased as compensation and in case of their failure to make payment of fine they would undergo Simple Imprisonment for 03 months. All the sentences to run concurrently with benefit of section 382-B Cr.PC

12. Needless to state that no fire was made by appellants Qurban Ali @ Qaboo and Mubarak @ Makboo at complainant Haq Nawaz with intention to commit his murder, therefore, they are not

liable to be punished for an offence u/s 324 PPC, they are acquitted for such (324 PPC) penal section.

13. The captioned appeal and death reference are disposed of accordingly.

J U D G E

J U D G E

Sajjad Ali Jessar