

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD  
Criminal Jail Appeal No.D-234 of 2011  
{Confirmation Case No.11 of 2011}**

**Before;**

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

**Appellant:** Abid Ali son of Jabbar Qureshi,  
Through Mr. Hameedullah Dahri advocate

**Complainant:** Haji Muhammad Sharif,  
Through Mr. Parwaiz Ahmed Pirzada,  
advocate

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

**Date of hearing:** 06.11.2019

**Date of decision:** 06.11.2019

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

**MUHAMMAD IQBAL MAHAR, J.** The appellant by way of instant appeal has impugned judgment dated 23.07.2011 passed by learned Ist. Additional Sessions Judge, Shaheed Benazirabad, whereby he has been convicted and sentenced as under;

**“1. U/s 377 PPC:**

The accused Shall suffer R.I for 05 years and fine of Rs.50,000/-. In default of payment of fine, the accused shall suffer S.I for 03 months more.

**2. U/s 302 (b) PPC:**

The accused is sentenced to death as Tazir. He be hanged by neck till he is dead and U/s

344 Cr.P.C fine of Rs.3,00,000/-. If the amount is deposited by the accused, same be paid to the legal heirs of deceased Rameez, as compensation. In default of payment of fine, the accused shall suffer S.I for 01 year.

**3. 201 PPC:**

The accused shall suffer R.I for 07 years and fine of Rs.50,000/-In default of payment of fine, the accused shall suffer S.I for 03 months.”

2. The facts in brief necessary for passing the instant judgment are that the appellant with co-accused Abdul Jabbar and Mst. Khadija Bano (since acquitted) allegedly in furtherance of their common intention abducted boy Rameez and after subjecting him to un-natural lust committed his murder and then attempted to cause disappearance of his dead body to save themselves from legal consequences, for that they were booked and reported upon by the police.

3. At trial, the appellant and co-accused Abdul Jabbar and Mst. Khadija Bano did not plead guilty to charge and prosecution to prove it, examined complainant Haji Muhammad Shairf and his witnesses and then closed the side.

4. The appellant and co-accused Abdul Jabbar and Mst. Khadija Bano 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.

5. On conclusion of the trial, the learned trial Court acquitted co-accused Abdul Jabbar and Mst. Khadija Bano,

while convicted and sentenced the appellant as is detailed above vide judgment dated 23.07.2011, which is impugned by the appellant before this Court by way of instant appeal. Simultaneously, the learned trial Court has also made a reference with this Court u/s 374 Cr.P.C for confirmation of death sentence to the appellant, which now are 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 death sentence awarded to appellant Abid Ali for an offence punishable u/s 302 (b) PPC is modified into rigorous imprisonment for life with compensation to legal heirs of the deceased, by taking the mitigating circumstances of the case into consideration.

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

8. It was the case of the prosecution that the appellant and co-accused Abdul Jabbar and Mst. Khadija Bano in furtherance of their common intention abducted boy Rameez for ransom / un-natural lust and then committed his death after un-natural lust and thereafter, in order to save them from legal consequences put an attempt to cause disappearance of his dead body. It was the appellant Abid Ali, who made his confessional statement thereby supported the case of prosecution and in these circumstances, learned trial Court was

right to conclude that the prosecution has been able to prove its case against the appellant beyond shadow of doubt.

9. However, the death sentence awarded to appellant Abid Ali is concerned, it needs to be modified simply for the reason that the case of the prosecution has already been disbelieved by the learned trial Court in respect of co-accused Abdul Jabbar and Mst. Khadija Bano by acquitting them and the appellant apparently has been convicted and sentenced on the basis of his own confessional statement and learned counsel for the parties have consented for modification of death sentence into Rigorous Imprisonment for life, 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 appellant Abid Ali for an offence punishable u/s 302(b) PPC for having committed Qatl-e-Amd of boy Rameez is modified into Rigorous Imprisonment for life with fine of Rs.50,000/- payable to legal heirs of the deceased as compensation and in case of his failure to make payment of fine he would undergo Simple Imprisonment for 03 months. Needless to say that the conviction and sentence awarded to the appellant offences punishable u/s 377 PPC and 201 PPC would remain the same. All the conviction and sentences awarded to the appellant would run concurrently with benefit of section 382-B Cr.P.C.

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

**J U D G E**

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