

IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD
Criminal Appeal No.D-70 of 2013
{Confirmation Case No.23 of 2013}

Before;

Mr. Justice Irshad Ali Shah
Mr. Justice Amjad Ali Sahito

Appellant: Abu Bakar alias Babar son of Gul
Mohammad Makrani,
Through Mr. Sajjad Ahmed Chandio,
advocate.

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

Date of hearing: 19.11.2019

Date of decision: 19.11.2019

J U D G M E N T

IRSHAD ALI SHAH, J. It is the case of prosecution that the appellant not only committed Qatl-e-amd of deceased Ramchand by causing him dagger blows but caused dagger blows to PW Lachman with intention to commit his murder, for that he was booked and reported upon.

2 At trial, the appellant did not plead guilty to the charge and prosecution to prove it, examined PW-1 Chain Singh at (Ex.5), he produced his 164 Cr.P.C statement; PW-2 Laljee at (Ex.6), he produced his 164 Cr.P.C statement; PW-3 Amar Singh at (Ex.7), he produced his 164 Cr.P.C statement; PW-4 Lachman at (Ex.8); PW-5 Mangoo at (Ex.9), he produced memos of injuries, dead body, place of incident, arrest, recovery of clothes and recovery of dagger, Danishnama and Lashchakas Form; PW-6 Tapedar Nanjee at (Ex.10),

he produced sketch of wardat; PW-7 Roshan Ali at (Ex.11) the then Judicial Magistrate, he produced confessional statement of the appellant; PW-8 Dr. Sikander Lal at (Ex.12), he produced Provisional and Final medical certificate of injured; PW-9 Dr. Teerat Das at (Ex.13), he produced post mortem report on the dead body of the deceased; PW-10 SIO / ASI Peeromal at (Ex.14), he produced receipt of clothes; PW-11 SIO/ SIP Allahdino at (Ex.16); PW-12 SIO/SIP Abdul Hafeez at (Ex.17), he produced report of chemical examiner and then closed the side.

3. The appellant in his statement recorded u/s 342 Cr.PC denied the prosecution allegation by pleading innocence by stating that his confessional statement was got recorded by the police after maltreating him and by putting his mother and sisters under wrongful confinement. He did not examine anyone in his defence or himself on Oath to disprove the prosecution allegation against him.

4. On conclusion of the trial, the learned Ist Additional Sessions Judge, Mirpurkhas found the appellant guilty and then, vide his judgment dated 24.09.2015 convicted and sentenced him as under;

“(1) Under section 302(a) PPC, for Qatl-i-Amd of deceased Ramchand and he is sentenced to death as Qisas, he be hanged by neck till his death and also to pay compensation of Rs.200,000/- as contemplated under section 544-A Cr.P.C to the heirs of deceased for their mental anguish and psychological damage caused by him to legal heirs

which shall be recoverable as land revenue arrears and in default he shall suffer R.I. for six months more.

(2) Under section 337-D PPC, and sentence him to suffer R.I for ten years as Tazir. He shall also pay 1/3rd of the diyat amount as arsh to injured Lachman and in case of non-payment of arsh he shall suffer R.I for one year more.”

5. The appellant has impugned the above said judgment by preferring instant jail appeal while learned trial Court has sought for confirmation of death by making a reference with this Court; those now are being disposed of through instant judgment.

6. At the very outset, it is stated by learned counsel for the appellant that he would not press the disposal of instant appeal on merits if, the death sentence awarded to the appellant is converted and modified into Rigorous Imprisonment for Life by considering the mitigating circumstances of the case.

7. Learned A.P.G for the State has sought for dismissal of the instant appeal and confirmation of death sentence to the appellant by contending that the appellant has committed the offence in a brutal manner which is proved against him beyond shadow of doubt.

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

9. The prosecution has been able to prove its case against the appellant by examining PW / injured Lachman and whatever is

stated by him is supported by the ancillary evidence. On arrest from the appellant has also been secured the dagger, which he allegedly used in commission of incident and subsequent to it, the appellant has also admitted his guilt by making confessional statement before Magistrate having jurisdiction. In these circumstances, learned trial Court was right to make a conclusion that the prosecution has been able to prove its case against the appellant beyond shadow of doubt.

10. However, the death sentence awarded to the appellant for offence punishable u/s 302(a) PPC requires to be converted and modified for the reasons that the complainant Esromal could not be examined by the prosecution, on account of his death and in that way the appellant was deprived of valuable right of cross examination. There was no repetition of the injury either to the deceased or to the injured on the part of the appellant. The dagger allegedly used in commission of incident has been recovered from the appellant on 2nd day of his arrest and it has been subjected to chemical examination with delay of about 10 days to its recovery. The confessional statement of the appellant has been recorded on 3rd day of his arrest and there was no previous enmity between the parties. The appellant has not been awarded any punishment for offence punishable u/s 324 and 504 PPC even by learned trial Court. Therefore, the death sentence awarded to the appellant for offence punishable u/s 302(a) PPC is converted and modified with Rigorous

Imprisonment for Life with compensation of rupees two lac payable to the legal heirs of the deceased and in case of default whereof the appellant would undergo Simple Imprisonment for six months for offence punishable u/s 302(b) PPC. The conviction and sentence awarded to the appellant for offence punishable u/s 337-D 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.

11. 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”.

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

J U D G E

J U D G E

Ahmed/Pa.