

IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD  
Criminal Jail Appeal No.D-180 of 2009  
{Confirmation Case No.09 of 2009}

Before;

Mr. Justice Irshad Ali Shah

Mr. Justice Amjad Ali Sahito

**Appellant:** Abdul Sattar son of Ranjho Khan Leghari,  
Through Syed Tarique Ahmed Shah, advocate.

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

**Date of hearing:** 09.12.2019

**Date of decision:** 09.12.2019

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 appellant allegedly committed Murder of Mst.Waziran by causing her hatchet injury, for that he was booked and reported upon by the police.

2. At trial, the appellant did not plead guilty to the charge and prosecution to prove it, examined PW-1 complainant Ali Hassan at (Ex.06), he produced FIR and receipt where dead body of the deceased was delivered to him; PW-2 Muhammad Hashim at (Ex.07), he produced his statement recorded u/s 164 Cr.P.C; PW-3 Amir at (Ex.08), he produced his statement recorded u/s 164 Cr.P.C; PW-4 Chanesar at (Ex.09), he produced memo(s) of place of incident, dead body, inquest report, clothes of the deceased, arrest and recovery of hatchet; PW-5 Dr. Fahmida, the then WMO Taluka Hospital Matli at (Ex.10), she produced post mortem report, receipt, memo of examination of dead body and letter dated 30.05.2005; PW-6 ASI Miran Khan at (Ex.11); PW-7 SIP Abdul Ghafoor at (Ex.12), he

produced letter No.Cr.61 of 2005 dated 30.05.2005, letter addressed to Mukhtiarkar, letter addressed to civil Judge and J.M.Matli dated 09.6.2005 and chemical Examiner's report; PW-8 PC Manzoor Ali at (Ex.13); PW-9 Tapedar Aijaz Ahmed at (Ex.14), he produced sketch of place of incident and then closed the side.

3. The appellant in his statement recorded u/s 342 Cr.PC denied the prosecution allegation by pleading innocence. 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 2<sup>nd</sup> Additional Sessions Judge, Badin found the appellant guilty for the above said offence and then, vide his judgment dated 10.09.2009 convicted and sentenced him as under;

*“ Therefore, accused Abdul Sattar son of Ranjho Leghari is hereby convicted for the offence under section 302(b) PPC and sentenced to **death** subject to confirmation by the Honourable High Court of Sindh. He shall be hanged by neck till he is dead. He is also directed to pay compensation to the legal heirs of deceased as required under section 544(A) Cr.P.C amounting to Rs.1,00,000/-or in default of payment of compensation to suffer S.I for six months more. The accused is at liberty to file appeal within seven days. The accused has remained in jail he is given benefit of section 382-B Cr.P.C.”*

5. The appellant has impugned the above said judgment by preferring instant appeal while learned trial Court has made a reference for confirmation of death sentence awarded to the

appellant, which now is being disposed of together with the appeal of the appellant by way of instant judgment.

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

7. Learned A.P.G for the State by supporting the impugned judgment has sought for dismissal of the appeal and confirmation of the death sentence to the appellant.

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

9. Un-natural death of the deceased, the prosecution has been able to prove by examining medical officer Dr. Fehmida. As per her the deceased has died of un-natural death on sustaining blow with sharp cutting weapon, on her head, which as per allegation of the prosecution has been caused to the deceased by the appellant. In order to prove such allegation, the prosecution has examined complainant Ali Hassan. It was stated by the complainant that he took her daughter Mst. Wazeeran for treatment of her ailing son to Tando Ghulam Ali, they were followed by Mst.Malookan. After treatment of ailing boy of Mst.Wazeeran when they were going back to their village and had a break at "Musafirkhana", had a tea. In the meanwhile, there came the appellant, who committed death of

deceased Mst. Wazeeran by causing hatchet blow at her head. The complainant is supported in his version PWs Muhammad Hashim and Ameer. They have stood by their version on all material points, despite lengthy cross examination. Whatever, they have stated, take support from ancillary evidence. On arrest from appellant has also been secured hatchet allegedly used in commission of incident. 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

10. However, the death sentence awarded to the appellant is appearing to be harsh and it needs to be modified into Rigorous Imprisonment for life, being alternate sentence for the reason that the prosecution has not been able to prove the motive of the incident. Therefore, the death sentence awarded to appellant is converted and modified into Rigorous Imprisonment for life with compensation of Rs.100,000/-payable to the legal heirs of deceased and in case of his failure to make such payment, he would undergo Simple Imprisonment for six months with benefit of section 382-B Cr.P.C.

11. When motive was not proved. The Hon'ble Supreme Court of Pakistan in case of *Nadeem Zaman vs The State (2018 SCMR 149)* has reduced the death sentence to life while making the following observation;

*“---S. 302(b)--- Qatl-i-amd--- Reappraisal of evidence--- Sentence, reduction in---Mitigating circumstances---Motive not proved---Motive set up by the prosecution was that the accused killed the deceased as he suspected her to have caste magic on his sister because of which she became mentally ill---Said motive had not been established by the prosecution---Even the investigating officer of the case had failed to collect any material in support of the asserted motive---Lady who had statedly fallen mentally ill because of application of magic on her by the deceased had not even been examined by the investigating agency nor any investigation had been conducted in such regard---Motive asserted by the prosecution had, thus, remained far from being proved---During the investigation a dagger had allegedly been recovered from the custody of the accused but it was admitted that the recovered dagger was not stained with blood and, hence, the same did not stand connected with the alleged murder---In the absence of proof of the asserted motive the real cause of occurrence had remained shrouded in mystery and thus caution was to be exercised in the matter of the sentence of death awarded to accused---Sentence of death awarded to accused was reduced to imprisonment for life in circumstances---Appeal was disposed of accordingly.”*

12. Again, in case of ***Muhammad Akram alias Akri (2019 SCMR 610)***, when the motive was not proved, the death sentence was reduced into life by Hon’ble Supreme Court of Pakistan by making following observation;

*“---S. 302(b)--- Qatl-i-amd--- Reappraisal of evidence--- Sentence, reduction in---Death sentence reduced to imprisonment for life---Motive not proved---Specific motive was set out by the complainant in the FIR and in his statement recorded before the Trial Court by claiming that four days prior to the occurrence, accused along with his vagabond friends had come and stood in front of the house of the complainant, and the deceased had*

*reprimanded the accused, whereupon an altercation took place between the two; that the accused had allegedly threatened the deceased of dire consequences and on account of such grudge, the accused committed the crime---In his cross-examination, the complainant admitted that he had never reported to police that accused along with his vagabond friends used to come and stand in front of their house---Nothing was available on record to prove that the incidence of altercation between accused and deceased was ever reported to police---Complainant also did not disclose the names of vagabond friends of the accused who used to come and stand in front of the house of the complainant---Real cause of the occurrence had not been disclosed by either of the sides---In such circumstances, the motive set out by the prosecution remained far from being proved---Prosecution's failure to prove the motive set out by it certainly benefited the accused--Conviction of the accused under S. 302(b), P.P.C. was maintained but his sentence of death was converted into imprisonment for life”.*

13. In case of ***Ghulam Mohiuddin alias Haji Babu & ors Vs. The State (2014 SCMR-1034)***, the death sentence was modified by Hon’ble apex Court by making observation 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”.*

14. The captioned appeal and death reference are disposed of in above terms.

JUDGE

JUDGE

Ahmed/Pa.

