

## IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Jail Appeal No. 265 of 2018

Appellant : Muhammadullah s/o Haji Sangi Khan, through Ms. Abida Parveen Channar, advocate

Respondent : The State, through Mr. Fahim Hussain Panhwar, Deputy Prosecutor General, Sindh

Date of hearing : 08.04.2022.

Date of decision : 08.04.2022.

### **JUDGMENT**

**ZAFAR AHMED RAJPUT, J.-** Impugned in this criminal jail appeal is the judgment dated 09.12.2017, passed in Sessions Case No.1464 of 2014, arisen out of Crime No.389/2014 registered at Police Station Sohrab Goth, under sections 302, 324, P.P.C, whereby the learned Additional Sessions Judge-IV Malir, Karachi convicted the appellant for offence under Section 302(b), P.P.C. and sentenced him to imprisonment for life; he was also convicted under Section 34, P.P.C. and sentenced to undergo S.I. for 05 years. Both the sentences were ordered to run concurrently.

2. Learned Counsel for the appellant after arguing the case at some length, contends that she will not press this criminal appeal on merits if the sentences awarded to the appellant are reduced to a period, which the appellant has already remained in incarceration, on the ground that there are mitigating circumstances favouring the appellant and that till date the appellant has served out the sentence including the remissions for a period of 10 years, 11 months and 20 days, whereby he has sufficiently been punished.

3. Learned Deputy Prosecutor General, after going through the record, concedes to the request of learned counsel for the appellant for reduction of the sentence to already undergone.

4. I have perused the impugned judgment so also scanned the record. The jail roll of the appellant was called, which is available on record. As per the jail roll of the appellant furnished by the Senior Superintendent, Central Prison & Correctional Facility, Karachi

under covering letter, dated 07.04.2022, the appellant has served out the sentence of 07 years, 04 month and 01 day and he has also earned remissions of 03 year, 07 months and 19 days, whereby the appellant has served the total sentence for 10 years, 11 months and 20 days till date and the unexpired portion of his sentence as shown in his jail roll is 14 years and 10 days.

5. It further appears from the perusal of the record that the P.W-1 complainant has deposed that five accsued persons fired on his son deceased Dost Muhammad, out of them he identified three accsued persons as Muhammadullah (*present appellant*), Rehmatullah and Magha. P.W-2 Bahadur Khan has deposed that aforementioned three accsued persons fired on the deceased. P.W-3 Abdullah has deposed that only Rehmat fired on the deceased. P.W-4 Habib Khan has deposed that five accsued persons fired on the deceased. P.W-4 Habib Khan has deposed that five accsued persons fired on the deceased. As per deposition of P.W-6, SIP Ali Akber, the deceased suffered four bullet injuries and P.W-6, Dr. Abid Haroon, MLO, has described four entry wounds on the body of the deceased. It is also an admitted position that the appellant also sustained injuries in incident and he was taken to hospital by police but no crime weapon was recovered from him.

6. It is also an admitted position that after pronouncement of impugned judgment three absconding accused, namely, Sher Ali Tareen, Muhammad Naeem and Dad Gul @ Magha were arrested and vide judgment dated 07.09.2019 accused Sher Ali Tareen and Muhammad Naeem were acquitted of the charge while accused Dad Gul @ Magha, who recorded his confessional statement before a Judicial Magistrate, was awarded death sentence on the same set of facts.

7. In view of above, while considering the aforementioned infirmities in depositions of P.Ws/alleged eye-witnesses, and the fact that on same set of allegations two co-accused have been acquitted of the charge by the trial Court, under mitigating circumstances of the case, the impugned judgment to the extent of conviction is maintained; however, the conviction recorded under Section 302(b), P.P.C. is converted

into 302(c), P.P.C. and the sentence awarded to the appellant by the learned trial Court is reduced to already undergone.

**8.** With the above modification in the sentence, the appeal is dismissed. The appellant is in jail, he shall be released forthwith if his custody is not required by the jail authorities in any other case/crime.

JUDGE

*Athar Zai*