

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR
Criminal Jail Appeal No.D-33 of 2020
Criminal Reference No. D- 05 of 2020

Before:

Mr. Justice Irshad Ali Shah

Mr. Justice Zulfiqar Ali Sangi

Appellant Imran Ali S/o Muhammad Sulleman Bhatti,
through Mr. Muhammad Zubair Malik,
advocate.

The State **Through** Syed Sardar Ali Shah Rizvi,
Additional Prosecutor General

Date of hearing 11-01-2024

Date of decision 11-01-2024

J U D G M E N T

IRSHAD ALI SHAH, J- It is the case of the prosecution that the appellant abducted Abdul Rehman a boy aged about 10/11 years with intention to commit his murder; committed his murder by throttling his neck and then thrown his dead body in a watercourse in order to cause disappearance of evidence to save himself from legal consequences, for that he was booked and reported upon by the police. On conclusion of trial, he was convicted u/s 302(b) PPC and sentenced to death to be hanged by neck till he is dead subject to confirmation by this Court and was also directed to pay compensation of Rs.300,000/- to the legal heirs of the deceased and in default whereof to undergo simple imprisonment for six months by learned Additional Sessions Judge/MCTC, Ubauro vide judgment dated 08-09-2020, which he has impugned before this Court by preferring a jail appeal; a reference is also made by learned trial Court for confirmation of *death* sentence to the appellant.

2. At the very outset, it was pointed out by learned counsel for the appellant that the offence alleged against the appellant was entailing the capital punishment, therefore, the examination-in-chief of Medical Officer Dr. Aijaz Ali ought not to have been recorded in absence of his

counsel, such exercise is contrary to the mandate prescribed under paragraph 6 of Chapter VII of Federal Capital and Sindh Courts Criminal Circulars. By pointing so, he suggested for remand of the case for recording evidence of the above named Medical Officer in accordance with the law, which is not opposed by learned Addl. PG for the State by contending that even otherwise the very judgment is illegal as no punishment is awarded to the appellant for abducting the deceased before his death and for causing disappearance of evidence by throwing his dead body in a watercourse to save himself from legal consequence.

3. Heard arguments and perused the record.

4. The omission pointed above being incurable in terms of Section 537 Cr.PC has occasioned in failure of justice and is contrary to the mandate contained by Article 10-A of the Constitution of Islamic Republic of Pakistan, 1973, which prescribes right of fair trial to everyone; consequently, the impugned judgment is set aside with direction to learned trial Court to record evidence of the above named Medical Officer as is prescribed by law and then to make the fresh disposal of the case in accordance with the law independently without being influenced by earlier finding, preferably within two months after receipt of copy of this judgment. *Death reference is answered in negative.*

5. The instant Criminal Jail Appeal and Reference are disposed of accordingly.

Judge

Judge