

**IN THE HIGH COURT OF SINDH AT KARACHI**

**PRESENT:-**  
**Mr. Justice Omar Sial**  
**Mr. Justice Shamsuddin Abbasi**

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**Criminal Appeal No.246 of 2023**  
**[Confirmation Case No.02 of 2023**

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Date

Order with signature of Judge

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For hearing of main case:

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**14.05.2026.**

Appellant in person.  
Mr. Ali Gohar Masroof, Advocate for the complainant.  
Complainant Mst. Bano is present in person.  
Mr. Muhammad Iqbal Awan, Additional Prosecutor General  
[Sindh].

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**Shamsuddin Abbasi, J.-** Aijaz @ Tota son of Aas Muhammad, appellant, has assailed the validity of the judgment dated 03.04.2023, penned down by the learned Additional Sessions Judge-I / Model Criminal Trial Court (MCTC), Karachi (East), in Sessions Case No.1352 of 2018 arising out of FIR No.166 of 2018 registered at Police Station Korangi, District East, Karachi, for offences under Sections 302, 109 and 34, PPC, through which the appellant was convicted under Section 302(b), PPC and sentenced to death on two counts with the direction that he be hanged by the neck till death. He was further ordered to pay compensation amounting to Rs.500,000/- each to the legal heirs of the deceased in terms of Section 544-A, Cr.P.C. and in default whereof to suffer simple imprisonment for six months more, however, co-accused Usman and Mst. Samreen were acquitted of the charge by extending to them the benefit of doubt.

2. The prosecution case, in brief, is that Naveed Ashraf (deceased) was done to death by the appellant Aijaz @ Tota, allegedly with the assistance of his accomplices, by resorting to firearm violence through the use of a 9 mm

pistol. The motive attributed by the prosecution is that Mst. Samreen, wife of the deceased, had allegedly developed illicit relations with the appellant, who persistently pressurized the deceased to divorce her and upon his refusal to accede to such demand, the appellant acting at the instigation of Mst. Samreen and with the help of his associates committed the murder of Naveed Ashraf. The FIR was lodged by Mst. Bano, mother of the deceased.

3. After registration of the crime, investigation ensued in accordance with law and upon completion thereof, challan was submitted before the competent Court under Sections 302, 109 and 34, PPC, whereby the appellant along with co-accused Usman and Mst. Samreen were sent up to face trial.

4. A formal charge for offences punishable under Sections 302, 109 and 34, PPC was framed against the appellant and co-accused, to which they pleaded not guilty and claimed trial.

5. Upon conclusion of the trial, the learned trial Court acquitted co-accused Usman and Mst. Samreen by extending to them the benefit of doubt, whereas the appellant was found guilty of the offence punishable under Section 302(b), PPC and was convicted and sentenced as detailed in para-1 (supra), thus giving rise to the instant appeal.

6. The appellant, present in person, submitted that he does not press the instant appeal on merits and confines his challenge solely to the quantum of sentence seeking conversion of the death sentence into imprisonment for life. In support of his stance, he also filed a written application to such effect. The complainant, who is present in Court along with her counsel, as well as the learned Additional Prosecutor General, Sindh, conceded to the said proposal and raised no objection to the conversion of sentence from death to life imprisonment.

7. We have heard appellant in person, the complainant assisted by her counsel, as well as the learned Additional Prosecutor General, Sindh, and have also undertaken an independent reappraisal of the entire material available on record with their able assistance.

8. In view of the unequivocal and conscious stance adopted by the appellant, who has elected not to press the appeal on merits and has restricted his submissions exclusively to the question of sentence, coupled with the fair concession extended by the complainant and the learned State counsel, we have independently examined the matter in light of the peculiar facts and circumstances of the case.

9. A careful scrutiny of the record reveals that the appellant is approximately 27 years of age at the time of recording his statement under Section 342, Cr.P.C. on 21.02.2023. It is now a firmly entrenched principle of criminal jurisprudence that while determining sentence, the Court is under a solemn legal obligation to maintain a delicate balance between the gravity of the offence and the mitigating circumstances relatable to the offender and the occurrence itself. Sentencing is not to be exercised mechanically or as an act of sheer retribution rather it is one of the most sensitive judicial functions requiring a cautious, humane and balanced appraisal of all aggravating and mitigating factors so that the punishment ultimately imposed remains proportionate, just, fair and consistent with the settled principles of criminal justice administration. The philosophy underlying punishment is not confined merely to retribution, but equally extends to deterrence, societal protection and, wherever possible, reformation and rehabilitation of the offender.

10. There can be no cavil with the proposition that an offence falling within the ambit of Section 302(b), PPC is heinous in nature and ordinarily attracts the extreme penalty of death. Nevertheless, it is equally well settled that capital punishment is not to be awarded as a matter of course merely because the offence proved is punishable with death. The consistent view of the Hon'ble Supreme Court is that where even a single mitigating circumstance is available on the record creating the slightest doubt regarding the propriety of the extreme penalty, the Court would be justified in extending the lesser punishment of imprisonment for life. The rule of caution governing capital punishment is founded upon the universally acknowledged principle that while an erroneous extension of lesser punishment may subsequently be corrected, an erroneous deprivation of human life is irreversible, irretrievable and beyond redemption. Therefore, the Courts are required to exercise utmost judicial restraint and circumspection before maintaining a sentence of death.

11. In the present case although the prosecution has successfully established the charge against the appellant beyond reasonable doubt and the conviction recorded by the learned trial Court does not call for interference, yet the record unmistakably reflects the existence of mitigating circumstances which substantially dilute the justification for maintaining the extreme penalty of death. Significantly, no material has been brought on record by the prosecution to demonstrate that the appellant is a previous convict, hardened criminal or a person beyond the possibility of reformation. Likewise, there is nothing on record to suggest that he constitutes a continuing menace to society. It is also of considerable importance that despite the unfortunate and condemnable nature of the occurrence, the complainant being the mother of the deceased along with her counsel as well as the learned Additional Prosecutor General have not opposed the conversion of sentence from death to imprisonment for life. Although such concession by itself is not binding upon the Court in matters involving capital punishment, nonetheless it remains a relevant circumstance which may legitimately be considered particularly where independent mitigating circumstances are otherwise available on the record warranting judicial leniency within the parameters recognized by law.

12. It also merits notice that the appellant has not challenged his conviction on merits and has substantially confined his submissions to the quantum of sentence alone. Though such limitation upon the scope of challenge cannot curtail the duty of this Court to independently examine the legality and propriety of the sentence, yet the same constitutes an additional circumstance reflecting acceptance of culpability and a plea confined to the question of punishment.

13. While dealing with the question of sentence in cases of Qatl-i-Amd, the Hon'ble Supreme Court in the case of *Ahmad Nawaz and another v. The State* (2011 SCMR 593) while relying upon the dictum laid down in the case *Muhammad Riaz and another v. The State* (2007 SCMR 1413) authoritatively held that although death may be treated as a normal penalty for Qatl-i-Amd, yet imprisonment for life is equally a lawful sentence prescribed by law and wherever the facts and circumstances disclose mitigating considerations, the lesser punishment ought to be preferred. The august Court has emphasized

that no inflexible or mechanical rule can be uniformly applied in every case and that the question of sentence must invariably be determined upon an objective appraisal of the peculiar facts and circumstances attending each individual case.

14. Another mitigating circumstance available in favour of the appellant is his youthful age and the natural tendency of youth towards emotional excitement, impulsiveness and impaired maturity of judgment, which have consistently been recognized by superior Courts as valid mitigating factors while determining sentence in capital cases. Under Section 302(b), PPC, imprisonment for life is one of the lawful punishments provided by law for the offence of Qatl-i-Amd. We are further fortified from the dictum laid down by the Hon'ble Supreme Court in the case of *Amjad Shah v. The State* (PLD 2017 Supreme Court 152), wherein youthful age and impulsive disposition were treated as mitigating circumstances justifying conversion of death sentence into imprisonment for life.

15. Guided by the principles enunciated in the afore-referred judgments and upon taking an overall view of the matter, we are persuaded to hold that the present case squarely falls within the ambit of mitigating circumstances warranting interference in the quantum of sentence. In our considered opinion, the ends of justice would be adequately met if the sentence of death awarded to the appellant is converted into imprisonment for life. Such modification would sufficiently satisfy the requirements of punishment, deterrence and societal interest while simultaneously preserving the principles of proportionality, fairness and possibility of reformation, which are now recognized as integral components of modern sentencing jurisprudence.

16. For the foregoing reasons and in view of the settled principles governing sentencing policy coupled with the law laid down by the Hon'ble Supreme Court in the cases (supra), while maintaining the conviction of the appellant under Section 302(b), PPC, we upon reappraisal of the mitigating circumstances available on the record convert the sentence of death awarded to the appellant into imprisonment for life, however, the amount of compensation imposed upon the appellant under Section 544-A, Cr.P.C. and the sentence awarded in lieu thereof shall remain intact and unaltered. The

appellant shall also be entitled to the benefit of Section 382-B, Cr.P.C. for the period already undergone by him during incarceration.

17. Subject to the above modification in sentence, this Criminal Appeal No.246 of 2023 is dismissed whereas the Murder Reference arising out of Confirmation Case No.02 of 2023 is answered in "NEGATIVE" and disposed of accordingly.

JUDGE

JUDGE

*Naeem/PA*