ORDER SHEET

IN THE HIGH COURT OF SINDH, AT KARACHI

Criminal Appeal No.223 of 2025
alongwith
Criminal Jail Appeal No.212 of 2025
[Confirmation Case No.09 of 2025]
[Rahim Bux v The State]

Date	Order with signature of Judge

1. For hearing of main case.
2. For hearing of MA No.4590/2025.

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13.05.2026

Ms. Fouzia Kalwar, Advocate for the Appellant.
Mr. Muhammad Iqbal Awan, Addl. Prosecutor General [Sindh].
Mst. Ghouri, mother of deceased present in person.

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JUDGMENT

Shamsuddin Abbasi.- J. Rahim Bux son of Imam Bux, the appellant, was tried by the learned Additional Sessions Judge-I / Model Criminal Trial Court (MCTC), Thatta, in Sessions Case No.365 of 2015 arising out of FIR No.163 of 2017 registered at Police Station Makli for offences punishable under Sections 302, 506(2) and 504, PPC. By a judgment dated 12.03.2025, the learned trial Court convicted the appellant under Section 302, PPC and sentenced him to death by hanging subject to confirmation by the High Court of Sindh in terms of Section 374, Cr.P.C. The appellant was further directed to pay compensation in the sum of Rs.200,000/- to the legal heirs of the deceased under Section 544-A, Cr.P.C., and in default thereof, to undergo simple imprisonment for a further period of six months.

2. Mst. Shabana is the deceased whereas the complainant, Qabil, is her father. It is the prosecution case that the deceased had contracted marriage with Qadir Bux son of Imam Bux and that Rahim Bux, brother of Qadir Bux, was not happy with the said wedlock and ill-will against the complainant party on that account. It is alleged that due to the said dispute, the appellant committed murder of Mst. Shabana by inflicting hatchet blows upon her head. As a consequence of the injuries sustained by her, Mst. Shabana succumbed to the injuries at the spot. Hence, the present FIR came to be registered.

3. Pursuant to the registration of the FIR, the investigation was followed and in due course the challan was submitted before the Court of competent jurisdiction under the above referred Sections whereby the appellant was sent up to face the trial.

4. The appellant was charged with offences under Sections 302, 506(2) and 504, PPC, to which he pleaded not guilty and claimed trial. The learned trial Court, after a full-dressed trial, found the appellant guilty of the offence charged with and thus convicted and sentenced him as detailed in para-1 (supra), which necessitated the filing of the listed appeal.

5. The learned counsel for the appellant, at the very outset, submits that he does not press the instant appeal on merits and confines his submissions solely to the question of quantum of sentence with the request that the sentence of death awarded to the appellant be converted into imprisonment for life. In support thereof, he contended that the appellant is not a previous convict, has no criminal antecedents and does not fall within the category of hardened criminal warranting the extreme penalty of death. Mst. Ghouri, mother of the deceased present in Court has stated that the complainant is no more alive and being one of the legal heirs of the deceased, she has no objection if the sentence of death awarded to the appellant is converted into imprisonment for life. The learned Additional Prosecutor General also endorsed the said proposal and recorded his no objection to the conversion of the appellant's sentence from death to imprisonment for life.

6. Heard learned counsel for the respective parties and perused the entire available material with their able assistance.

7. In view of the stance adopted by the learned counsel for the appellant, who has not pressed the appeal on merits and has confined his submissions solely to the question of quantum of sentence coupled with the concession extended by the mother of the deceased as well as the learned Additional Prosecutor General, both of whom have raised no objection to the conversion of the sentence of death into imprisonment for life. We have carefully examined the matter in light of the peculiar facts and circumstances of the case. It is by now a firmly entrenched principle of criminal jurisprudence that while determining the quantum of sentence, the Court is

under a legal obligation to maintain a delicate and judicious balance between the gravity and brutality of the offence on one hand and the mitigating circumstances attending the offender and the occurrence on the other. Sentencing is not to be exercised mechanically or in a purely retributive manner rather it is a solemn judicial function requiring cautious evaluation of all aggravating and mitigating circumstances so as to ensure that the punishment ultimately awarded is proportionate, just and in consonance with the settled principles of fairness and equity. The object of punishment is not merely to inflict retribution but also to achieve deterrence, protection of society and wherever possible, reformation of the offender.

8. 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. However, 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 taken by the Hon'ble apex Court is that where a single mitigating circumstance creating even the slightest doubt regarding the propriety of the extreme penalty is available on record, the Court would be justified in extending the lesser sentence of imprisonment for life. The rule of caution governing capital punishment proceeds on the well-recognized principle that while an error in extending lesser punishment may be rectifiable an erroneous deprivation of life is irreversible and beyond redemption.

9. In the present case, although the prosecution has succeeded in proving the charge against the appellant beyond reasonable doubt, yet the record reveals the existence of mitigating circumstances which in our considered view substantially dilute the propriety of maintaining the sentence of death. The occurrence admittedly arose out of a family dispute involving closely related parties. The appellant is brother-in-law of the deceased and the unfortunate incident appears to have occurred in the backdrop of familial relations rather than pursuant to any premeditated design exhibiting exceptional brutality, depravity or extreme callousness so as to bring the case within the category of rarest of rare cases warranting irreversible punishment.

10. It is also significant that the prosecution has not brought on record any material demonstrating previous criminal antecedents of the appellant or

any circumstance reflecting that he is beyond reformation or constitutes a continuing menace to society. Likewise, the manner of occurrence, though undoubtedly grave and condemnable, does not disclose such exceptional features of brutality or barbarity which would irresistibly call for the extreme penalty of death to the exclusion of the lesser sentence provided by law. The mitigating circumstances emerging from the record, when cumulatively assessed, create sufficient basis for extending the benefit of lesser punishment in favour of the appellant.

11. Furthermore, the conviction of the appellant has not been assailed on merits and the learned counsel for the appellant has primarily confined his arguments to the question of quantum of sentence. It is also noteworthy that the complainant is now deceased and the mother of the deceased as well as the learned State counsel have not opposed the conversion of the sentence from death to imprisonment for life. Although such concession or consensus is not binding upon the Court, yet the same constitutes a relevant circumstance which may legitimately be taken into consideration, particularly where independent mitigating factors are otherwise available on record.

12. While dealing with the question of sentence in cases of Qatl-i-Amd, the Hon'ble Supreme Court in case of *Ahmad Nawaz and another v. The State* [2011 SCMR 593], while relying upon the dictum laid down in the case of *Muhammad Riaz and another v. The State (2007 SCMR 1413)* observed that although death is the normal penalty for Qatl-i-Amd, yet life imprisonment is equally a legal sentence prescribed by law and where facts and circumstances furnish mitigating considerations, the lesser punishment should be preferred. The august Court emphasized that no hard and fast rule can be mechanically applied in every case and that the question of sentence must always be determined upon careful appraisal of the peculiar facts and circumstances of each case.

13. Guided by the principles enunciated in the afore-referred judgments and taking an overall view of the matter, we are persuaded to hold that the present case 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 meet the requirements of deterrence and punishment while simultaneously preserving the principles of proportionality, fairness and possibility of reformation recognized by modern sentencing jurisprudence. Accordingly, while maintaining the conviction of the appellant under Section 302(b), PPC, we convert the sentence of death awarded to him into imprisonment for life. The order regarding payment of compensation and the sentence awarded in default thereof shall remain unaltered. The appellant shall also continue to be entitled to the benefit of Section 382-B, Cr.P.C., as already extended by the learned trial Court.

14. Subject to the modification in sentence as indicated above, the instant appeals are dismissed whereas Confirmation Case No.09 of 2025 is answered in Negative.

JUDGE

JUDGE

Naeem /PA