

IN THE HIGH COURT OF SINDH AT KARACHI

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

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Criminal Appeal No.323 of 2023
Confirmation Case No.04 of 2023

Appellant Muhammad Nabi son of Saeed Ghulam
Through Mr. Aijaz Ahmed Bangash, Advocate.

Complainant Athar Anwar son of Anwar ul Haque in person.

Respondent The State
Through Mr. Muhammad Iqbal Awan, Additional
Prosecutor General (Sindh).

Date of hearing **06.05.2026**

Date of Judgment **11.05.2026**

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JUDGMENT

Shamsuddin Abbasi.- J. Muhammad Nabi son of Saeed Ghulam, the appellant, was tried by the learned Additional Sessions Judge-V/Model Criminal Trial Court (MCTC), Karachi (East), in Sessions Case No. 87 of 2020 (FIR No. 585 of 2019) registered at Police Station Gulshan-e-Iqbal, District East, Karachi, for offences under Sections 302, 397 and 34, PPC. By a judgment dated 14.06.2023, he was convicted under Section 302(b), PPC and sentenced to death by hanging subject to confirmation by the High Court of Sindh in terms of Section 374, PPC. He was further directed to pay Rs. 400,000/- as compensation to the legal heirs of the deceased under Section 544-A, Cr.P.C., and in default thereof to undergo six months' simple imprisonment. He was also convicted under Section 397, PPC and sentenced to rigorous imprisonment for eight (08) years. The benefit of Section 382-B, Cr.P.C. was extended to him.

2. Misbah Akhtar, aged about 22 years, is the deceased whereas the complainant is her father. It is alleged that she was murdered by two unknown persons during the course of an attempted dacoity. According to the complainant, the assailants arrived on a motorcycle and at gun point snatched mobile phone and other belongings including cash from him. They further compelled the deceased to hand over her mobile phone and in the meanwhile one of the accused made fire shot which caused injuries to the

deceased. She was subsequently shifted to hospital in injured condition, where she succumbed to her injuries during treatment, hence this FIR.

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 whereby the appellant was sent up to face the trial under the above-referred Sections whereas one Muhammad Bashir @ Qari son of Lal Muhammad was shown as absconding under Section 512, Cr.P.C.

4. The appellant was charged with offences under Sections 302, 307 and 34, 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 offences 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 provided that the death sentence awarded to the appellant is converted into life imprisonment contending that the appellant is a young man and has no previous criminal record and is not a previous convict. The complainant present in person and the learned Additional Prosecutor General also endorsed the said proposal and recorded their no objection to the conversion of death sentence into life imprisonment.

6. Heard learned counsel for the appellant, complainant in person and the learned Additional Prosecutor General (Sindh) and perused the entire available material with their able assistance.

7. In view of the stance taken by the learned counsel for the appellant, who does not press the appeal on merits and confines his prayer only to the quantum of sentence and further considering the concession extended by the complainant as well as the learned Additional Prosecutor General, who have raised no objection to the conversion of the capital punishment into life imprisonment, we have examined the matter carefully in light of the peculiar facts and circumstances of the case. A bare perusal of the record reveals that the appellant is a young man, aged about 25 years and has no previous criminal record or past involvement in any criminal case. These mitigating

circumstances assume significant importance in the context of sentencing as the criminal law does not operate solely on retribution but also recognizes the principles of reformation and rehabilitation particularly where the offender is not a habitual or hardened criminal. In like cases an opportunity may be given to the appellant to improve himself as a law abiding citizen because a reformed person will not only be a better brick for society but may also be helpful for future by properly raising his dependents.

8. It is a well-settled principle of criminal jurisprudence that while determining the quantum of sentence, the Court is required to strike a just balance between the gravity of the offence and the mitigating factors relating to the offender. The object of sentencing is not merely to punish the offender but also to ensure deterrence in society while, at the same time, keeping open the door of reformation wherever the circumstances so justify. No doubt, the offence under Section 302(b), PPC is of a heinous and grave nature, which ordinarily warrants the extreme penalty of death. However, the settled principles of sentencing policy mandate that capital punishment is to be awarded only in the rarest of the rare cases, where the mitigating circumstances are either absent or of negligible weight.

9. In the present case, the presence of clear mitigating factors, particularly the young age of the appellant, his clean antecedents and the absence of any previous criminal history weigh heavily in favour of awarding a lesser sentence. These factors clearly indicate that the appellant does not fall within the category of a hardened or habitual offender, and therefore, the possibility of reformation cannot be ruled out. Moreover, since the appellant's conviction has not been assailed on merits and the question of sentence has been left to the discretion of the Court with the concurrence of both the complainant and the learned State counsel, such consensus, though not binding upon the Court, is nonetheless a relevant circumstance to be taken into consideration particularly when it is reinforced by independent mitigating factors available on record.

10. Taking an overall view of the matter and exercising judicial discretion in a balanced and cautious manner, we are persuaded to hold that the ends of justice would be adequately met if the sentence of death awarded to the appellant is converted into imprisonment for life. This course would not only

meet the ends of deterrence but would also uphold the principles of proportionality, fairness, and reformation in sentencing policy. Therefore, while treating the present case as one involving mitigating circumstances, we find guidance from the case of *Ahmad Nawaz and another v. The State* [2011 SCMR 593], wherein it has been observed and emphasized as under:-

"The recent trend of the courts with regard to the awarding of penalty is evident from several precedents. In the case of 'Iftikhar-ul-Hassan v. Israr Bashir and another' (PLD 2007 SC 111), it was held that 'this is settled law that provisions of sections 306 to 308, P.P.C. attracts only in the cases of Qatl-i-Amd liable to Qisas under section 302(a), P.P.C. and not in the cases in which sentence for Qatl-i-AMD has been awarded as Tazir under section 302(b), P.P.C. The difference of punishment for Qatl-i-AMD as Qisas and Tazir provided under sections 302(a) and 302(b), P.P.C. respectively is that in a case of Qisas, Court has no discretion in the matter of sentence whereas in case of Tazir Court may award either of the sentence provided under section 302(b), P.P.C. and exercise of this discretion in the case of sentence of Tazir would depend upon the facts and circumstances of the case. There is no cavil to the proposition that an offender is absolved from sentence of death by way of qisas if he is minor at the time of occurrence but in a case in which qisas is not enforceable, the Court in a case of Qatl-i-Amd, keeping in view the circumstances of the case, award the offender the punishment of death or imprisonment for life by way of Tazir. The proposition has also been discussed in 'Ghulam Murtaza v. State' (2004 SCMR 4), 'Faqir Ullah v. Khalil-uz-Zaman' (1999 SCMR 2203), 'Muhammad Akram v. State' (2003 SCMR 855) and 'Abdul Salam v. State' (2000 SCMR 338). The Court while maintaining the conviction under section 302(b), P.P.C. awarded him sentence of life imprisonment under the same provision and also granted him the benefit, of section 382-B of Cr.P.C. In Muhammad Riaz and another v. The State (2007 SCMR 1413) while considering the penalty for an act of commission of Qatl-i-Amd it was observed that "No doubt, normal penalty for an act of commission of Qatl-i-Amd provided under law is death, but since life imprisonment also being a legal sentence for such offence must be kept in mind wherever the facts and circumstances warrant mitigation of sentence, because no hard and fast rule can be applied in each and every case."

11. For the foregoing reasons and in view of the settled principles governing sentencing policy as well as by placing reliance on the dictum laid down by the Hon'ble Supreme Court of Pakistan in the case (supra), we are persuaded to hold that the instant case falls within the ambit of mitigating circumstances warranting interference in the quantum of sentence. Accordingly, while maintaining the conviction of the appellant under Section 302(b), PPC, we, in exercise of our appellate jurisdiction and upon reappraisal

of the mitigating factors available on record, convert the sentence of death awarded to the appellant into imprisonment for life. The sentence is accordingly modified to this extent. All other convictions and sentences awarded by the learned trial Court are maintained, which shall run concurrently and the appellant shall also be entitled to the benefit of Section 382-B, Cr.P.C. as already extended by the learned trial Court.

12. Subject to the above modification, this Criminal Appeal No.323 of 2023 is dismissed on merits and the Confirmation Case No. 04 of 2023 is answered accordingly.

JUDGE

JUDGE

Naeem /PA