

IN THE SUPREME COURT OF PAKISTAN

(Appellate Jurisdiction)

PRESENT:

Mr. Justice Mushir Alam

Mr. Justice Qazi Faez Isa

Criminal Petition No.751 of 2017

Against the order dated 31.5.2017 passed by
High Court of Sindh, Sukkur in Cr. Jail Appeal
No.S-44 of 2009

Muhammad Juman

Petitioner(s)

VERSUS

The State & others

Respondent(s)

For the Petitioner(s)

: Mr. M. Amjad Iqbal Qureshi, ASC
Syed Rifaqat Hussain Shah, AOR

For the State

: Mr. Zafar Ahmed Khan, Addl. PG.
Sindh

For the Respondent(s)

: Mr. Adil Aziz Qazi, ASC a/w
Respondents No.2-5

Date of Hearing

: 23.11.2017

ORDER

Mushir Alam, J- Muhammad Juman-Petitioner/Complainant has impugned the order dated 31.5.2017 passed by the learned Bench of the High Court of Sindh Bench, Sukkur whereby the accused nominated in Crime No.30 of 2005 for an offence under sections 302,34,PPC registered at Police Station Padidan, District Nausheroferoze, faced the trial, charge was established and conviction was handed down by the learned trial Court under section 302(b) PPC read with section 149 PPC and sentenced them to suffer *R.I for life as Ta'zir* and to pay fine in the sum of Rs.50,000/- (fifty thousand only) each, as compensation to the legal heirs of the deceased Abdul Sattar with benefit of section 382-B Cr. PC.

2. The conviction was challenged by the convicts the learned Bench of the High Court vide impugned order dated 31.5.2017 while maintaining the conviction under section 302(b) PPC reduced the sentence to already undergone (*i.e. respondent No.2 Gul Hassan served out twelve years Respondents No. 3 to 5 namely Bahadur, Abdul Haque and Ali Hassan, respectively having served out imprisonment for a period of eight years, two months and twenty eight days at the time of impugned judgment*)

and the appellant therein were ordered to be released forthwith, if not required in any other case.

3. It was contended by the learned counsel for the petitioner-complainant that the learned High Court, while passing the order impugned, did not consider that no case for mitigation and or reduction of the sentence "*already undergone*" was made out. Once the conviction is maintained under section 302(b) PPC the punishment provided is '*death or imprisonment for life as Ta'zir*' and nothing short thereof. According to him, there is nothing on record to show that the learned Bench of the High Court treated or converted the conviction recorded under section 302(b) PPC to one under section 302(c) PPC wherein the Court could have reduced the sentence of any magnitude less than life, provided circumstances were shown to exist to mitigate the sentence. He therefore, prays for setting aside of the impugned order and seeks direction to remand back the Respondents No.2 to 5 to jail to serve out the sentence awarded by the learned trial Court.

4. Learned Additional Prosecutor General, Sindh has no cavil to the proposition recorded above, according to him without recording any mitigating circumstances sentence could not have been reduced and that too less than what is prescribed under section 302(b) PPC, without converting the conviction to one under section 302(c) PPC .

5. Learned counsel for the respondents No.2 to 5, submits that on the merits it was a fit case for acquittal, and in alternate conversion of sentence under section 302(c) PPC, which in substance was treated so by the learned High Court. He however, concedes that the Court did not record any mitigating circumstance to convert the sentence. It was urged that since the respondents 2 to 5 are illiterate villager they were satisfied to be released from jail on whatever terms and conditions. It was for such reasons that the learned counsel then appearing before the Court had no qualm to treat the sentence already undergone instead of contesting the matter to earn acquittal and for converting the sentence under section 302(c) PPC, he submits that he has no objection if the matter is remanded to the High Court with direction to hear the parties on merits and record the finding accordingly.

6. Learned counsel for the respondents No.2 to 5, submits that since the respondents 2 to 5 have shown respect to the order of this Court and on notice have surrendered and appeared before this Court, they have already served out substantial sentence as already noted above. Jail Petition was filed on 24.4.2009, which remained pending for considerable period, till they were ordered to be released on 31.5.2017, therefore, impugned sentence be suspended till decision of Jail Petition by the High Court, in case conviction is maintained they would invariably be sent to jail to serve out the remaining sentence. In case they earn acquittal or even conversion of sentence under section 302(c) PPC, their lost liberty cannot be compensated. Learned Advocate General, Sindh on such score and in view of the peculiar facts and circumstances of case has no objection to the suspension of sentence till the hearing and decision by the learned Bench of the High Court. Learned ASC for the Petitioner, requests for direction to decide the Jail Appeal at an early date.

7. Heard the arguments and perused the record. Sentence is the punishment recognized and prescribed under Pakistan Penal Code, (section 54 PPC) to which the offender are liable and which could be inflicted on a person, who is proved guilty of an act or omission (offence), under the Pakistan Penal Code, at the trial, by the Court of competent jurisdiction. Once a person is proved guilty of an offence, the Court trying the offender looking at the gravity of offence, the manner in which offence is committed and other attending circumstances may inflict any quantum of the sentences as may be prescribed under the charging provision, it cannot be less nor more than what is prescribed. Sentence inflicted within the parameter prescribed by the law is 'legal sentence', which a Court of law is competent to inflict. It is the only the appellate and or revisional Court as the case may be, reverse the finding of conviction and or sentence and acquit or discharge the accused, modify and or alter the finding and or nature of conviction and quantum of sentence and any consequential or incidental order that may be just, proper and adequate (see sections 423, 439, 439-A Cr.P.C). Sentencing is one of the most important and intricate task, which a criminal Court has to perform while handing down a conviction after conclusion of a criminal trial. Inflicting conviction and imposing sentence is not a mechanical exercise but it is onerous responsibility to inflict, fair, reasonable and adequate sentence, commensurate with gravity and or severity of crime, looking at the motive, attending and or mitigating circumstances that provoked or instigated

commission of crime and it involves conscious application of mind. No mathematical formula, standard or yard stick could be prescribed or set out to inflict conviction and sentence, such factors vary from case to case and while undertaking such exercise Court must keep in sight provisions contained in Chapter-III and IV of the PPC. Unfortunately, no sentencing guideline is laid down in Pakistan, though Courts have set out certain parameters in many cases as to what is mitigating and or aggravating circumstances that may warrant alteration and or varying in conviction and or sentence within the parameters of provided under the charging or penal provision. For illustration one may see case of Ghulam Murtaza and another versus The State (PLD 2009 Lahore 362), arising out of an appeal under the CNS Act 1997, and is more than often cited for the purposes of sentencing accused convicted under the Control of Narcotics Substances Act of 1997, in cited case elaborate exercise has been undertaken to prescribe sentencing an accused convicted of carrying or possessing different types and quantity of contraband, in paragraph 10 thereof it was held that *"In the matter of sentence a Court may depart from the norms and standards prescribed above but in all such cases the Court concerned shall be obliged to record its reasons for such departure."* One may also see Ameer Zeb versus The State (PLD 2012 Supreme Court 380) and Nadeem Ashraf versus The State (2013 SCMR 1538).

8. Attending to the merits of case in hand in the light of above discussion, the respondents 2 to 5 all were charged for an for *"Qatl-e-Amd of deceased Abdul Sattar under section 302 PPC read with section 149 PPC"*. Punishment for Qatal-e-Amd is provided for under section 302 PPC as follows:

"(a) punished with death as qisas;

(b) punished with death or imprisonment for life as ta'zir having regard to the facts and circumstances of the case, if the proof in either of the forms specified in section 304 is not available; or

(c) punished with imprisonment of either description for a term which may extend to twenty-five years, where according to the Injunctions of Islam the punishment of qisas is not applicable.

Provided that nothing in clause (c) shall apply where the principle of fasad-fil-arz is attracted and in such cases only clause (a) or clause (b) shall apply."

In the instant case learned trial Court came to a conclusion that the *"Prosecution has proved its case against the accused persons namely Gul Hassan, Bahadur, Abdul Haque, Ali Hassan beyond any shadow of reasonable doubt. As regards the sentence, I think that since the accused are of young age and also close relatives to each other, therefore, there are mitigating circumstances to award lesser punishment. I, therefore, convict the accused persons namely Gul Hassan, Bahadur, Abdul Haque, Ali Hassan, for the offences punishable u/s 302(b) PPC Read with Section 149 PPC, and thereby sentence them to suffer S.I Imprisonment for Life as Ta'zir and to pay a fine of Rs.50,000/- each as compensation to the legal heirs of deceased Abdul Sattar."*

9. As noted above, learned trial Court came to a conclusion that accused persons have committed an offence chargeable under section 302(b) PPC, which section provide either of the two legal sentences, viz. *"death"* OR *"imprisonment for life."* Learned trial Court considered 'young age of the accused' and being close relative to each other" as mitigating circumstances to award lesser of the two legal sentences provided under section 302(b) PPC viz. *"imprisonment for life"* and not *"with death"*, the maximum sentence as provided under the charging provision.

10. As noted above, through impugned order, appellate Court while maintaining the conviction under section 302(b) PPC modified the sentence to *"already under gone"*, without application of mind and in a mechanical fashion, as noted above, either of the two legal sentence for an offence under section 302(b) PPC is provided viz. *"death"* OR *"imprisonment for life"* and nothing in-between, shorter or greater. In case the Appellate Court, looking at the attending and mitigating circumstances was convinced that the sentence awarded is sever and or that mitigating and or other attending circumstances existed or that the case is covered by any of the legal exception or that case of the respondent fell under clause (c) to section 302 PPC, and also beyond the pale of proviso thereto, it was only than Court could have exercised the discretion to award any term of sentence or punishment *"with imprisonment of either description for a term which may extend to twenty five years....."*

11. In the instant case as noted above, learned Bench of the High Court, without application of mind and recording any reasons to alter a sentence,

in a mechanical manner, reduced the sentence *as already undergone*, which is not a legal sentence within the contemplation of section 302(b) PPC. It is only when the appellate Court is convinced that the case fell within clause (c) of section 302 PPC than only it is proper for the appellate Court to modify and or vary the conviction from section 302(b) to 302(c) PPC and award sentence as has been done, provided also, after being satisfied that the case is not one of honour killing, an exception, per proviso thereto.

12. Under facts and circumstances of case, we set aside the impugned order. The Criminal Jail Appeal No.S-44 of 2009 shall be deemed to be pending and it is expected that the learned Bench as may be assigned will hear and decide the appeal preferably within a period of thirty days from the date of receipt of the copy of this order. Since it is an old matter preference may be given to decision of the appeal. In peculiar circumstances of the case, we are inclined to accede to the request of the learned counsel for the respondents 2 to 5 to suspend the sentence awarded by the learned trial Court. Learned counsels for the complainant as well as the convicts and Additional Prosecutor General undertake that they shall appear before the Sindh High Court and make all endeavours to render assistance for the disposal of the case in accordance with law at an earliest. The respondents 2 to 5 present before us shall furnish bail bonds and sureties in the sum of Rs.50,000/- (fifty thousand only) each in the like amount to the satisfaction of the Nazir of the High Court of Sindh, within 15 days from the date of receipt of copy of this order.

13. Accordingly, the petition is converted into appeal, and allowed in terms noted above.

JUDGE

Islamabad
23rd November, 2017
Arshed

JUDGE

Approved for Reporting.