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IN THE HIGH COURT OF SINDH AT KARACHI

Present:

Mr. Justice Mohammad Karim Khan Agha

CRIMINAL APPEAL NO.859 OF 2019

Appellant: Azeem Tariq S/o Sahib Jaleel  
through Mr. Khuda Dino Sangi, Advocate

Respondent/State: Mr. Mumtaz Ali Shah, Asstt. Prosecutor  
General, Sindh.

Date of hearing: 2803.2024

Date of announcement: 08.04.2024

J U D G M E N T

Mohammad Karim Khan Agha, J.- Appellant Azeem Tariq son of Sahib Jaleel has preferred this appeal against the impugned judgment dated 08.11.2019 passed by the 1<sup>st</sup> Additional Sessions Judge/Model Criminal Trial Court, Karachi South in Sessions Case No.287/2015 at PS Preedy U/s 324 PPC converted into Section 302 PPC; whereby the appellant was convicted and sentenced to life imprisonment for committing an offence punishable under Section 302(b) PPC and directed him to pay compensation to the legal heirs of the deceased U/s 544-A Cr.P.C. in the sum of Rs.300,000/- and in default thereof, he would also suffer SI for six months more. However, the appellant was extended benefit of Section 382-B Cr.P.C.

2. The brief facts of the prosecution case as per FIR lodged by complainant Ghulab Khan are that his son Islam Nabi aged about 16/17 years used to do glass work in a shop in Magazine Line near Tibat Center, Karachi. The complainant further stated that on 07.08.2014 at about 07:30 p.m. his younger brother Ameen informed him on phone that his son was injured due to churri stabbing and he was under treatment in civil hospital, Karachi. On such information, he alongwith his relatives rushed to civil hospital where he saw that his son was under treatment in operation theater. He further stated that on enquiry made by himself, he came to know that his son was doing work at the shop in Magazine Line and at about 1730 hours, when there was his scuffle with a boy namely Azeem Tariq son of Sahib Jaleel, who attacked upon his son with churri with intent to kill him and caused him churri injuries therefore he alleged against

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Azeem Tariq, which resulted in registration of the instant FIR. Further, as per prosecution case, the injured Islam Nabi succumbed to his injuries during treatment at civil hospital, as such, offence under Section 324 PPC shown in the FIR was converted into offence under Section 302 PPC.

3. After completion of usual investigation charge was framed against the appellant, to which he pleaded not guilty and claimed to be tried.

4. In order to prove its case, the prosecution examined 11 witnesses who exhibited various documents and other items in support of the prosecution case. The statement under section 342 Cr.PC of the accused was recorded wherein he denied the allegations of prosecution and claimed to be innocent. However, the accused neither examined himself on oath nor produced any witness in his defence.

5. After hearing the learned counsel for the parties and assessment of evidence available on record, learned trial Court vide judgment dated 08.11.2019, convicted and sentenced the appellant as stated above, hence this appeal has been filed.

6. The facts of the case as well as evidence produced before the trial Court find an elaborate mention in the impugned judgment, therefore, the same are not reproduced here so as to avoid duplication and unnecessary repetition.

7. After reading out of the evidence learned counsel for the appellant under instructions did not argue the case on merits and conceded that based on the evidence the appellant had murdered the deceased however he contended that it was a case which fell within the purview of S.302 © PPC and not S.302 (b) PPC and only argued that the appellant's conviction be converted to that under S.302 (c) PPC based on the evidence on record and the particular facts and circumstances of the case. This was because he contended that (a) that there was no prior ill will or enmity between the appellant and the deceased (b) that the appellant had a sudden flare up and a quarrel with the deceased (c) on account of this provocation resulting from the quarrel the appellant stabbed the deceased (d) that there was no premeditation to murder of the deceased as the stabbing occurred in the heat of the quarrel (e) the appellant only gave one stab wound to the deceased which subsequently lead to his death in hospital and as such the stabbing was not brutal.(f) that the appellant had no previous criminal record.



Based on the above factors learned APG had no objection to the conviction of the appellant being converted from S.302 (b) PPC to S.302 (c) PPC.

8. I have gone through the evidence on record and find that the prosecution has proved the murder of the appellant by the deceased beyond a reasonable doubt for the following reasons; (a) that the FIR was lodged with promptitude naming the appellant as the person who murdered the deceased (b) that the eye witness to the murder was an independent eye witness who was not a chance witness who got a clear view of this day light murder of the deceased by the appellant from relatively close range and was clearly able to recognize the appellant who he knew from before and thus there was no need for an identification parade; he gave his S.161 Cr.PC statement within a day of the incident which was not materially improved on during the course of his evidence; he was not dented during cross examination and I find his evidence to be trust worthy reliable and confidence inspiring and as such I believe the same and place reliance on it; (c) That the medical evidence shows that the deceased died from a stab wound which supports the evidence of the eye witnesses; (d) That the knife (murder weapon) was recovered on the pointation of the appellant after his arrest from a hidden place which only he would have known about; (e) that no witness (police or otherwise) had any enmity or ill will with the appellant which would lead them to implicate him in this false case; that there are no material contradictions in the evidence of the witnesses.

9. The only issue left before me therefore is whether the offence falls within the ambit of S.302 (b) or S.302 (c) PPC.

10. Based on the appellants contentions I find from the record that this is a case which falls within the ambit of S.302 © PPC and not S.302 (b) PPC as supported by the contents of the promptly lodged FIR, the eye witness and other witness evidence which proves that the appellant gave one stab wound to the deceased in the heat of the moment following a quarrel between them, that no previous enmity existed between them and the appellant stabbed the deceased with the weapon which he already had on his person in the heat of the moment.

11. In this respect reliance is placed on the case of *Azmat Ullah V The State* (2014 SCMR 1178) which held as under;

*"A bare perusal of the FIR, the statements made by the eye-witnesses before the learned trial Court and the findings recorded by the learned courts below clearly shows that there was no background of any ill-will or*

*bitterness between the appellant and his deceased brother and that the incident in issue had erupted all of a sudden without any premeditation whatsoever. The medical evidence shows that the deceased had received one blow of a churri on his chest whereas another blow was received by him on the outer aspect of his left upper arm. The doctor conducting the post-mortem of the dead body had categorically observed that both the injuries found on the dead body of the deceased could be a result of one blow of chhurri. These factors of the case squarely attract Exception 4 contained in the erstwhile provisions of section 300, PPC. It has already been held by this Court in the case of Ali Muhammad v. Ali Muhammad and another (PLD 1996 SC 274) that the cases falling in the exceptions contained in the erstwhile provisions of section 300, PPC, now, attract the provisions of section 302(c) PPC. The case in hand was surely a case of lack of premeditation, the incident was one of a sudden fight which was a result of heat of passion developed upon a sudden quarrel and no undue advantage had been taken by the appellant nor had he acted in a brutal or unusual manner. In these circumstances Exception 4 contained in the erstwhile section 300, PPC squarely stood attracted to the case in hand and, thus, the case against the appellant fell within the purview of the provisions of section 302(c) PPC.” (bold added)*

Further reliance is placed on the cases of *Raza and another v The State* (2020 SCMR 1185) and *Alamgir v Gul Zaman and others* (2019 SCMR 1415).

12. Based on the above discussion I find that the prosecution has not proved its case against appellant under S.302 (b) PPC but the prosecution has proved its case against the appellant under S.302 (c) PPC beyond a reasonable doubt and as such the appellant's conviction under S.302 (b) PPC is converted in to a conviction under S.302 (c) PPC and the appellant is sentenced to RI for 14 years with the benefit of S.382 (B) Cr.PC.

13. The appeal is disposed of as modified above.