

IN THE HIGH COURT OF SINDH, CIRCUIT COURT,
MIRPURKHAS

Criminal Jail Appeal No.S-28 of 2024
Old Criminal Jail Appeal No.S-163 of 2019.

Appellant : Nawaz Ali s/o Muhammad Yousuf Khaskheli
Through Ms. Ambreen Sial advocate

The State : Through Mr. Ghulam Abbas Dalwani,
Deputy P.G

Date of hearing : 18-09-2025.

Date of decision : 18-09-2025

J U D G M E N T

Amjad Ali Sahito, J:- This judgment shall decide the fate of the captioned Jail Appeal preferred by appellant Nawaz Ali s/o Muhammad Yousuf Khaskheli through Senior Superintendent Central Prison, Hyderabad, impugning the judgment dated 01-07-2019, passed by learned Additional Sessions Judge-I/MCTC, Mirpurkhas, in Sessions Case No.375/ 2015 (Re. St.Vs.Nawaz Ali), vide FIR Crime No.41/2015, registered for offence punishable under Sections 302, 504 PPC at Police Station Naukot, whereby he, for having committed the murder of complainant's sister Mst. Saleemat, was sentenced to suffer imprisonment for life under Section 302(b) PPC, with compensation of Rs.100,000/=, to be paid to the legal heirs of the deceased as provided under section 544-A Cr.P.C, and in default thereof, to suffer S.I for six months more. However, benefit of section 382-B Cr.P.C was extended to the appellant.

2. The brief facts of the prosecution case as per FIR lodged by complainant Muhammad Yousuf at Police Station Naukot on 01-11-2015 at 1645 hours are that his sister Mst. Saleemat was married with accused Nawaz Ali Khaskheli about 27-28 years ago and his sister's husband used to maltreat his sister and used abusive language and his sister always made such complaints to him. On 01-11-2015 he was present at the house of his sister Mst. Saleemat where accused Nawaz Ali abused his sister, on which he restrained him and meanwhile his uncle Moharram Ali

and his son namely Abdul Qayoom arrived there. Accused Nawaz Ali within their sight caused *chhuri* blow on the abdomen of his sister Mst. Saleemat with intention to kill her; the intestines came out from her abdomen and she became unconscious and sat down. Accused Nawaz Ali while throwing the *chhuri* succeeded to run away from there. Thereafter, they took injured Mst. Saleemat towards hospital, but on the way she succumbed to her injuries and expired. Then they brought the dead body of Mst. Saleemat at Government hospital Naukot, where after completion of legal formalities the dead body was handed over to them for burial purpose and after funeral ceremony, complainant appeared at Police Station Naukot and lodged instant FIR.

3. After completion of usual investigation, the I.O submitted a police report under section 173 Cr.P.C before the trial court, showing appellant in custody. After supplying copies of necessary documents to the appellant, charge was framed against him, to which he pleaded not guilty and claimed trial.

4. At trial, the prosecution to prove its' case, examined in all seven (07) witnesses, who produced numerous documents and then learned Prosecutor closed the prosecution side by filing statement. Thereafter, statement of the appellant/ accused under section 342 Cr.P.C was recorded wherein he denied the allegations being false and claimed his innocence. Accused declined to examine himself on oath as required under section 340(2) Cr.P.C, however, he examined defence witness Fayyaz Ali and then learned counsel for the appellant/ accused closed the side of defence evidence by filing such statement. After hearing learned counsel for both parties, learned trial Court convicted the appellant through impugned judgment, hence this Criminal Jail Appeal.

5. It is pertinent to mention here that due to absence of learned counsel for the appellant, P.O of the appellant was issued and in pursuance thereof he is produced in custody and he submitted that he remained in jail for sufficient time and learnt the lesson and prayed for his acquittal.

6. Learned Deputy P.G looking to the above position, raised no objection for conversion of the sentence of the appellant from section 302(b) PPC to section 302(c) PPC and reduction of sentence as one of already undergone.

7. Heard and perused.

8. Upon meticulous examination of the evidence of the eyewitnesses/complainant Muhammad Yousuf, it transpires that on **01.11.2015**, he was present at the residence of his sister, namely **Mst. Saleemat**, who was married to the accused. At approximately **09:30 a.m.**, the accused began abusing Mst. Saleemat, whereupon the complainant restrained him from using such abusive language. In the meantime, the complainant's uncle **Moharram** and his son **Abdul Qayoom** arrived at the scene upon hearing the commotion. Thereafter, in their presence, the accused inflicted *churi* (knife) blows upon the abdomen of Mst. Saleemat, causing her to fall to the ground and lose consciousness. The accused thereafter fled the place of occurrence after throwing down the said *churi*.

9. The second eyewitness, **Prosecution Witness (P.W.) Moharram**, in his deposition stated that on the said date, he along with Abdul Qayoom was present at his residence when they heard cries emanating from the house of the accused Nawaz Ali. Upon reaching there, they observed that the accused and his wife were exchanging abuses, while the complainant Muhammad Yousuf was also present. Within their sight, the accused Nawaz Ali inflicted *churi* blows upon the abdomen of Mst. Saleemat with the intention of causing her death, whereupon the complainant raised an alarm, and the accused fled the scene after throwing down the *churi*.

10. The third eyewitness, **P.W. Abdul Qayoom**, corroborated the above account by deposing that on the same date, while present at his residence with Moharram, he too heard cries from the house of the accused. Upon arrival, he witnessed the accused Nawaz Ali inflicting a *churi* blow to the abdomen of his paternal aunt, Mst. Saleemat. Despite their attempt to apprehend the

accused, he managed to escape after throwing the weapon at the spot.

11. Upon consideration of the entire evidence, there is nothing on record to suggest that the murder of the deceased Mst. Saleemat was premeditated. The occurrence appears to have taken place in the heat of the moment. Consequently, it is observed that the appellant did not harbor the intention to commit *qatl-e-amd* (intentional murder) as defined under Section 300(a), Pakistan Penal Code (P.P.C.). Hence, the conviction and sentence under Section **302(b) P.P.C.** are not sustainable. Rather, the case of the appellant appropriately falls within the ambit of **Section 302(c) P.P.C.** In this regard, I am fortified with the cases of ***Amjad Shah v. The State* [PLD 2017 Supreme Court 152]**, ***Zeeshan @ Shani v. The State* [PLD 2017 Supreme Court 165]**, ***Azmat Ullah v. The State* [2014 SCMR 1178]**.

12. In the case of *Zeeshan @ Shani [supra]*, the Honorable Supreme Court has held that:

11. The appellant did not premeditate the killing, nor could he have since the complainant party had arrived unannounced at his house. Needless to state that if the complainant side had not sought out the appellant no fight would have occurred. Be that as it may, the appellant should not have struck the deceased with force and that too on a vital part of his body. The appellant, however, struck only a single blow with a simple stick and not with any weapon. Both the victim and the perpetrator were young men and had joined hands to render slaughtering services together. Unfortunately, a dispute over the share of the takings resulted in the death of one of them. There is no reason for us to take a different view from the one taken in the afore-cited precedents. In this case the appellant without premeditation and in the heat of a free fight had struck the deceased with a single blow of a stick. In such circumstances, his case would come within clause (c) of section 302 PPC.

12. Therefore, in view of the facts and circumstances of the case it would be appropriate to alter the conviction of the appellant recorded under section 302 (b) PPC to one under section 302 (c) PPC and, consequently, reduce his sentence to ten years rigorous imprisonment whilst maintaining the sentence of fine and the simple imprisonment in default thereof. The benefit under section 382-B of the Cr.P.C. shall be extended to the appellant.

In another case of Azmat Ullah [supra], the Honorable Supreme Court has held that:

4. ... A bare perusal of the F.I.R., the statements made by the eyewitnesses 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 chhurri 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, P.P.C. 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, P.P.C. now, attract the provisions of section 302(c), P.P.C. 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, P.P.C. 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), P.P.C.

5. Keeping in view the facts and circumstances of the case this appeal is partly allowed, the conviction of the appellant for an offence under section 302(b), P.P.C. is converted into that for an offence under section 302(c) P.P.C. and consequently his sentence is reduced from rigorous imprisonment for twenty five years to rigorous imprisonment for ten years. The sentence of fine passed against the appellant by the learned trial court and upheld by the Lahore High Court, Lahore has been found by us to be unwarranted because section 302 (b) or 302 (c), P.P.C. do not contemplate any such sentence. Instead of fine we direct that the appellant shall pay a sum of Rs. 50,000 to the heirs of the deceased by way of compensation under section 544-A, Cr.P.C. or in default of payment thereof he shall undergo simple imprisonment for six months. The benefit under section 382-B, Cr.P.C. shall be extended to him. This appeal is disposed of in these terms.

13. During pendency of instant Jail Appeal, Jail Roll of the appellant was called from the concerned Jail Superintendent, who sent the same vide letter dated 18-09-2025, which shows that appellant has served out 09 years, 10 months and 17 days without remission and has earned remission of 10 years, 02 months and 02 days he remained in jail more than 20 years. Hence the appellant has served out major portion of his sentence and learnt the lesson as he has undergone for his sentence. Further learned A.P.G has also raised his no objection for conversion of the sentence of the appellant from section 302(b) PPC to section 302(c) PPC and reduction of sentence as one of already undergone.

14. For what has been discussed above, instant Criminal Jail Appeal was **dismissed** vide short order **dated 18.09.2025**; however, conviction and sentence awarded through impugned judgment dated 01-07-2019 by the learned trial court to the appellant for an offence under section 302(b) PPC in FIR No. 41/2015 of PS Naukot was converted into that for an offence under section 302(c) PPC and consequently, appellant's sentence was converted from life imprisonment to imprisonment for nineteen (19) years. However, compensation amount of Rs.100,000/= was ordered to be paid to the legal heirs of the deceased as provided under section 544-A Cr.P.C, in case of failure whereof, the appellant shall suffer S.I for six (06) months more. Since the appellant has completed his sentence, therefore, the appellant, who was produced in custody, was sent back to Jail with direction to the Jail Superintendent concerned to release him forthwith if not required in any other case/crime. **Consequently, instant Criminal Jail Appeal stands disposed of with the above modification.** The reasons for my short order dated **18.09.2025** are set forth herein.

JUDGE