

**IN THE HIGH COURT OF SINDH CIRCUIT COURT
HYDERABAD**

Criminal Appeal No.S-33 of 2003

Appellant: Abdul Wahid Arain present on bail through Mr. Kamran Baig, Advocate.

Respondent: The State through Ms. Rameshan Oad, Assistant Prosecutor General Sindh.

Date of hearing: **12.09.2022.**

Date of Judgment: **12.09.2022.**

J U D G M E N T

AMJAD ALI SAHITO, J. Being aggrieved and dissatisfied with the judgment dated 31.12.2002, passed by the learned Sessions Judge, Mirpurkhas in Sessions Case No.18 of 1995 arising out of the FIR No.08/95 for an offence under section 302 PPC registered at PS Digri, whereby the appellant was convicted under section 302 (a) PPC for murdering deceased Hafiz Shabbir Ahmed and sentenced to suffer Imprisonment for life and pay fine of Rs.50,000.00 [Rupees fifty thousand only], and Rs.50,000/- as compensation to be paid to the legal heirs of deceased Hafiz Shabbir Ahmed. In case of default in payment of fine amount, six months more imprisonment; likewise, in case of non-payment of compensation amount, the appellant shall also suffer six months more imprisonment. However, the benefit of section 382-B Cr.P.C. was also extended to the appellant.

2. The brief facts of the prosecution case are that on 31.01.1995 at 1930 hours complainant Molvi Bashir Ahmed appeared at police station Digri and lodged report stating therein that he is Pesh Imam in the Masjid of his Village. He has three sons and five daughters. Appellant Abdul Wahid intended to

marry with Miss Safia Khanum the daughter of complainant and demanded her hand but the complainant refused expressing that he is a poor person while appellant was a zamindar. However, on 31.01.1995 at 0230 hours appellant came in the house of complainant and committed murder of Hafiz Shabbir Ahmed the son of complainant due to refusal for marriage of Miss Safia Khanum with the appellant by causing dragger blow on the back of Hafiz Shabbir Ahmed.

3. After observing all formalities including recording of statements of complainant Bashir Ahmed, PWs Zaheer Ahmed, Mst. Nafisa Khanum, Miss Safia Khanum, Sultan Mohammad (Judicial Magistrate), Anwaruddin, Mohammad Aslam, Mohammad Yakoob, Fida Hussain Shah and Liaquat Ali as well as statement of accused under section 342 Cr.P.C., the learned trial Court convicted and sentenced the appellant / accused in the manner as stated above.

4. Learned counsel for the appellant / accused contended that appellant arranged his marriage with Miss Safia Khanum, the sister of deceased Shabbir but he was not agreed while parents of Miss Khanum were agreed to this marriage, as such, at the time of Nikah some exchange of hard words taken place with the deceased, which resulted the murder of deceased. Learned counsel contended that there was no intention of the appellant to commit murder of deceased but the incident took place all of sudden due to above reasons. Learned counsel, therefore, prayed for conversion of sentence from section 302 (a) PPC to section 302 (c) PPC.

5. On the other hand, learned A.P.G. Sindh raised no objection for conversion of the sentence from section 302 (a) PPC to section 302 (c) PPC.

6. I have heard learned counsel for the parties and have minutely gone through the material available on record with their able assistance.

7. On perusal of the record, it is crystal clear from the ocular as well medical evidence that the deceased Shabbir

Ahmed expired by his unnatural death by sustaining single injury i.e. stab wound 4 cm x 2 cm x peritoneal cavity deep over the back of lower part of left side of chest by sharp cutting weapon. In the entire evidence of prosecution, nothing has come on record, which shows that the accused has repeated infliction of dragger blows to the deceased. The complainant / PW-01 Bashir Ahmed in his examination-in-chief has admitted that ***“Then the accused started taking my injured son Shabbir Ahmed with himself to which I asked him to leave Shabbir Ahmed, as I wanted to take him to the hospital, to which he replied that he would himself take Shabbir Ahmed to the hospital. Then the accused put Shabbir Ahmed in a datsun vehicle wherein only one driver was sitting.... Then I performed ablution and offered prayer. Thereafter I and my son Zaheer Ahmed went to Digree Hospital on a motorcycle, where we found my son Shabbir Ahmed in the Civil Hospital while accused Abdul Wahid himself was also with him.*** The conduct of the appellant showed that he has no intention to kill the deceased but he tried his level best to save the life of the deceased Shabbir Ahmed. He himself shifted the deceased to the hospital. He remained with him. The complainant was satisfied that the appellant was with the deceased after performing prayer and in the evening time he went to hospital. Things are not ended here due to critical condition of the injured he was shifted to Civil Hospital Hyderabad. The accused / appellant was with the complainant party. Perusal of the confessional statement of the accused recorded before the Judicial Magistrate shows the appellant stated that this incident allegedly took place suddenly at the time of Nikah arranged with Miss Safia Khanum due to exchange of hard words with the deceased, who was not ready with this marriage. Therefore, I observe that the appellant had no intention to kill deceased as defined under part (a) of section 300 PPC, hence, the sentence under section 302 (a) PPC is not justifiable but the case of appellant fall under section 302 (c) PPC. In this regard, I am also 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].

8. 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 to be undergone for failure to pay fine. As held by the Courts below the appellant will also receive the benefit of section 382-B of the Cr.P.C.”

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 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 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.”

9. The upshot of the above discussion the appeal is partly **allowed**, the conviction of the appellant for an offence under section 302(a) PPC is converted into that for an offence under section 302 (c) PPC and consequently his sentence is reduced from Imprisonment for life including fine amount to R.I for ten years. However, the appellant is directed to make payment of Rs.50,000.00 [rupees fifty thousand only], which he deposited the same with the Accountant of this Court and produced such receipt. The Accountant is directed to disburse the same amongst the legal heirs of deceased. The impugned judgment of conviction and sentence passed by the learned trial Court is modified accordingly. The benefit of section 382-B Cr.P.C. shall be extended to the appellant.

10. It would be very essential to mention here that the Jail Roll of the appellant submitted by the Senior Superintendent Officer Incharge, Central Prison Correctional Facility, Hyderabad at the direction of this Court, reflects that the appellant has served out fourteen years, two months and twenty five days of his sentence including remission, as such, after modification of impugned judgment, the appellant has completed his complete sentence. Appellant is present on bail; he is released. His bail bonds stand cancelled and surety discharged. Office is directed to return the surety papers to the surety after proper verification and identification.

11. This appeal is disposed of in the above terms.

JUDGE