

IN THE HIGH COURT OF SINDH CIRCUIT COURT, HYDERABAD.

Criminal Appeal No.S-10 of 2006

Appellants: Appellants namely Aziz, Abdul Majeed alias Majeed and Mir Jamali are present on bail through Mr. Mir Shakir Ali Talpur, Advocate.

Respondent: The State through Mr. Muhammad Noonari, Deputy Prosecutor General Sindh.

Complainant: injured Hamzo son of complainant present in person.

Date of hearing: 29.09.2022.

Date of Decision: 29.09.2022.

**JUDGMENT**

**AMJAD ALI SAHITO, J.** Through the captioned Criminal Appeal, the appellants have challenged the judgment dated 13.10.2005, passed by learned Sessions Judge, Dadu in Sessions Case No.102 of 2003, Crime No.06 of 2002 registered at PS Drigh Bala, District Dadu for the offence under section 302, 324, 337-A (i), 337-F (iii), 337-F (v), 504 PPC, whereby the appellants were convicted for offence under sections 302, 34 PPC and sentenced to Imprisonment for life and to pay compensation of Rs.1,00,000/- [rupees one hundred thousand only] each and in case of non-payment of compensation, they will suffer R.I. for three years more. If amount of compensation received, which be given to the legal heirs of the deceased Muhammad Juman. They were also convicted for offence punishable under sections 324, 34 PPC and sentenced to suffer R.I. for seven years and to pay fine of Rs.25,000/- [rupees twenty five thousand only] each; in case of non-payment of fine, they will suffer R.I. for one year more each. The appellants were convicted for offence under sections 504, 34 PPC and sentenced to suffer R.I. for two years each. All the sentences were ordered to run concurrently.

However, the benefit of section 382-B Cr.P.C. was extended to the appellants.

**2.** Appellants were charged for committing murder of deceased Muhammad Juman and causing firearm injuries to PW Hamzo both sons of complainant. After observing all the formalities, recording evidence of prosecution witnesses, statement of accused in terms of section 342 Cr.P.C., the appellants were convicted and sentenced as stated above.

**3.** Learned counsel for the appellants contended that though the prosecution case is full of contradictory evidence and if it is evaluated, the appellants would be acquitted of the charge; however, the parties have pulled off their differences and compromised the matter outside the Court. He has prayed, apart from compromise, for consideration that the appellants are not previously convicted and have remained in jail for more than nine years, as such, their sentences may also be considered to one they have already undergone then he will not argue the instant criminal appeal on merits. PW injured Hamzo, the son of complainant present has also confirmed that they pardoned the appellants in the name of Almighty ALLAH due to intervention of nekmards of the locality, therefore, complainant party has no objection if the appellants are acquitted.

**4.** On the other hand, learned Deputy Prosecutor General Sindh appearing for the State has submitted that since the parties have patched up in the name of Almighty ALLAH and physically the appellants have remained in jail for more than nine years and have also earned more than three years remissions in their sentence, therefore, he has no objection in case, a lenient view is taken against them by dismissing the appeal treating the sentence to one as already undergone.

**5.** I have heard the learned counsel for appellants, PW injured Hamzo in person, learned D.P.G. for the State and have gone through the record. It appears that this criminal appeal is pending before this Court since 2006 and the offence pertains to

the year 2002 since then the appellants are facing the case. The injured Hamzo, who is son of complainant [now dead] and brother deceased Muhammad Juman has also confirmed the contention of learned counsel for the appellants that they have compromised the matter and pardoned to the appellants in the name of Almighty ALLAH. The injured has specifically raised no objection for acquittal of the appellants. Apart from this development in the case, I have minutely perused the evidence of prosecution witnesses, however, no reason for committing murder of the deceased has been described by any of the witnesses in their evidence. Nonetheless, they have implicated the appellants in the commission of offence. On the other hand, in their statements recorded under section 342 Cr.P.C. the appellants have disclosed that the deceased had enmity with several persons. Since there is no element of preplanning or intention of the appellants found to kill the deceased, as such, I observe that the appellants had no intention to kill deceased as defined under part (a) of section 300 PPC, hence, as the learned trial Court has not written whether the accused are convicted under section 302 (b) PPC or 302 (c) PPC, as such, it is not justifiable but the case of appellants 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]**.

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.”*

6. Regardless there is also no objection on behalf of injured Hamzo, who is son of complainant and brother of deceased and no objection extended by learned D.P.G. Sindh and the appellants were not previously convicted as contended by the learned counsel; even though, the appeal is partly **allowed** and the conviction of the appellants for an offence under section 302,

34 PPC is converted into that for an offence under section 302 (c) PPC and consequently their sentence is reduced from Imprisonment for life including fine amount to R.I for ten years. However, the appellants are directed to make payment of Rs.100,000.00 [rupees one hundred thousand only] each, which if recovered is to be disbursed 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.

**7.** It would be very essential to mention here that the appellants have remained in Jail physically for more than nine years and earned remissions of three years in their sentences as per report dated 12.05.2011 submitted by the Superintendent Central Prison, Hyderabad, as such, after modification of impugned judgment, the appellants have completed their sentences including the sentence to be suffered in case of non-payment of compensation amount. Appellants are present on bail, therefore, they are released. Their bail bonds stand cancelled and surety[-ies] discharged. Office is directed to return the surety papers to the surety[-ies] after proper verification and identification.

**8.** Instant Criminal appeal is disposed of in the above terms.

**JUDGE**