

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

Criminal Appeal No.S-132 of 2000

Appellant: Muhammad Jumman Bajeer through Syed Tarique Ahmed Shah, Advocate.

Respondent: The State through Mr. Shahid Ahmed Shaikh, Deputy Prosecutor General Sindh.

Date of hearing: **09.09.2022.**

Date of Judgment: **09.09.2022.**

J U D G M E N T

AMJAD ALI SAHITO, J. Being aggrieved and dissatisfied with the judgment dated 16.08.2000, passed by the learned Sessions Judge, Badin in Sessions Case No.107 of 1998 arising out of the FIR No.13/98 for an offence under section 302 PPC registered at PS Kadhan, whereby the appellant was convicted under section 302 (b) PPC for murdering deceased Raboo and sentenced to suffer Rigorous Imprisonment for life and pay fine of Rs.50,000.00 [Rupees fifty thousand only] or in default six months more R.I. It was ordered that in case fine amount is recovered, the same be paid to the legal heirs of deceased. 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 14.05.1998 at 2100 hours complainant Bachoo appeared at police station Kadhan and lodged report stating therein that his father deceased Raboo on 09.05.1998 left to look after the lands of Khamiso Mallah. On day of incident PW Chakar Khaskheli at about 04.00 p.m. informed them that altercation took place between accused and the deceased on account of supply of water

at Kamaro Distributory. Accused gave hatchet blow on neck of deceased which resulted in his death. Complainant along with PWs Chakar and Rasool Bukhsh rushed at place of wardat and found dead body of deceased Raboo having hatchet injury lying there.

3. After observing all formalities including recording of statements of complainant Bachoo, P.Ws Chakar (eyewitness), Sajjan, Rasool Bakhsh, mashir Jaro, PC Ali, Medico-Legal Officer Dr. Abdul Sattar, I.O SIP Muhammad Bakhsh and 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 though there are material contradictions in the prosecution evidence, however, he submitted that the incident is taken place promptly when an altercation took place between accused and the deceased on account of supply of water at Kamaro Distributory. Learned counsel contended that from entire evidence of prosecution, nothing has come on record which shows that the incident took place with preplanning or intention to commit murder of deceased by the appellant, as such, learned counsel prayed for conversion of sentence from section 302 (b) PPC to section 302 (c) PPC.

5. On the other hand, learned D.P.G. Sindh appearing on behalf of the State has stated that the incident taken place promptly due to some dispute over supply of water, as such, he contended that this is a fit case for conversion of the sentence from section 302 (b) PPC to section 302 (c) PPC and extended his no objection.

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 Raboo expired by his unnatural death. There is sole eyewitness of the incident

namely Chakar, who in evidence has deposed that due to hot words exchanged between the accused and deceased over flow of the water, the incident taken place, which resulted death of deceased Raboo. In the entire evidence of prosecution, nothing has come on record, which shows that the accused has committed the murder of deceased by preplanning. As such, 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 (b) 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(b) PPC including fine amount 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. 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 twenty four years, seven months and four 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

Abdullahchanna/PS*