

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

Criminal Jail Appeal No.S-31 of 2010

Appellants: Haji Khan, Ramzan, Khadim Hussain and Ghulam Hussain present on bail through Ms. Razia Ali Zaman Khan Patoli, Advocate.

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

Date of hearing: **08.09.2022.**

Date of Judgment: **08.09.2022.**

**J U D G M E N T**

**AMJAD ALI SAHITO, J.** The appellants filed instant Criminal Jail Appeal being aggrieved and dissatisfied with the judgment dated 07.01.2010, passed by the learned 1<sup>st</sup> Additional Sessions Judge, Shaheed Benazirabad in Sessions Case No.216 of 2001 arising out of the FIR No.84/2001 for an offence under sections 302, 504, 34 PPC registered at PS Kazi Ahmed, whereby the appellants were convicted under section 302 (b) PPC for murdering deceased Jiando and sentenced to suffer Rigorous Imprisonment for life and pay fine of Rs.1,00,000.00 [Rupees one hundred thousand only] each, to the heirs of deceased. In case of default of payment, each accused shall suffer S.I. for six months more. However, the benefit of section 382-B Cr.P.C. was also extended to the appellants.

**2.** The brief facts of the prosecution case as described in the FIR lodged by complainant Manthar Zardari on 12.06.2001 are that three years back, he along with his brother Jiando and others had migrated from village Chanessar and residing in the lands of Mehar Khan Mahar. They use to get irrigating water from adjacent lands of Hamid Punjabi, being cultivated by Haji

Khoso party. An altercation had taken place between them on the matter of water. On 11.06.2001, he along with his brother Jiando Khan went to get water for irrigating the lands, whereby Haji Khoso issued threats to them. On the day of incident, his maternal uncle Pir Bux, brother Gulzar were available at the Otaq/inn and he along with his brother Jiando was going to the lands for taking care. At about 08.30 a.m., found accused Haji Khoso, Ramzan, Ghulam Hussain and Khadim Hussain duly armed with hatchets emerged from the sugarcane crop. Meanwhile, accused Haji Khoso by abusing his brother Jiando, caused hatchet blow to him on his neck, who fell down on the ground and other accused also caused hatchet blows. He raised cries, which attracted PWs Gulzar & Pir Bux and accused threatened them not to come near and went away to their house. They found Jiando died having sustained hatchet injuries on neck and other parts of the body. Leaving PWs Gulzar and Pir Bux on corpse, complainant came to PS and lodged FIR.

**3.** After observing all formalities, recording evidence of complainant Manthar, PWs Gulzar, Pir Bux, Dr. Muhammad Ali, Lal Khan, ASI Rahim Hussain, SIP Muhammad Ashfaque, Tapedar Dodo Khan and WHC Hakim Ali Sahito, the learned trial Court convicted and sentenced the appellants / accused in the manner as stated above.

**4.** Learned counsel for the appellants / accused contended that notwithstanding there are major contradictions in the prosecution evidence, which dents the prosecution case; and as a result of which, the appellants are required to be acquitted of the charge; however, since the incident took place in the lands, where the appellants / accused are haris, as such, there appears no element of preplan or intention of the accused to commit the murder of deceased. According to learned counsel, the complainant in his examination-in-chief has also disclosed this fact. Therefore, the punishment awarded to the accused is harsh, in fact, the learned trial Court ought to have awarded punishment under section 302 (c) PPC instead to R.I. for life. Learned counsel, therefore, prayed for conversion of the sentence

under section 302 (c) PPC. Learned D.P.G. Sindh supported the impugned judgment, however, after going through the record has not opposed the contentions as advanced by learned counsel for the appellants / accused.

5. I have heard learned counsel for the parties and have minutely gone through the material available on record with their able assistance. Manifestly after have a look at the prosecution evidence adduced through ocular as well as medical, it appears that deceased expired by an unnatural death. Prosecution has also succeeded to establish its case that due to infliction of hatchets blows the appellants / accused have committed murder of deceased Jiando. However, from entire prosecution evidence, it does not appear that the appellants / accused went towards the complainant party in order to commit murder of deceased. However, there appears that there was some altercation over water rotation between the complainant and accused party and this incident took place near the sugarcane crop of Chandias where the accused were haris. This fact is also substantiated from the evidence of complainant Manthar, who in his examination-in-chief has deposed that ***“... I and my brother Jiando were going by the side of water course to see our harap land and when we reached near the sugarcane crop of Chandias on which accused were haris, where all of sudden all the four accused armed with hatchets attacked on my brother Jiando and gave him hatchet blows on his head and other parts of his body.”*** In view of this position, it is crystal clear that the deceased was promptly murdered and nothing has come on record, which shows that the accused have committed the murder of deceased by preplanning. Consequently, I observe that the appellants 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 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]***.

6. 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.”*

7. The upshot of the above discussion the appeal is partly **allowed**, the conviction of the appellants for an offence under section 302(b) 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/compensation 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 appellants.

8. It would be very essential to mention here that the Jail Roll of the appellants submitted by the Senior Superintendent Officer Incharge, Central Prison Correctional Facility, Hyderabad at the direction of this Court, reflects that the appellants have served out 13 years, nine months and twenty six days of their sentences including remission, as such, after modification of impugned judgment, the appellants have completed their sentences, therefore, they are released. Their bail bonds stand cancelled and surety[-ies] stand discharged. Office is directed to return the surety papers to the surety [-ies] after proper verification and identification.

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

**JUDGE**