

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

Criminal Jail Appeal No.S-135 of 2005

Appellant: Amir Bux Kalhoro through M/s. Mir Shakir Ali Talpur and Aslam Baig Laghari, Advocates.

Respondent: The State through Mr. Muhammad Noonari D.P.G. Sindh.

Date of hearing: **29.09.2022.**

Date of Judgment: **29.09.2022.**

J U D G M E N T

AMJAD ALI SAHITO, J. Being aggrieved and dissatisfied with the judgment dated 13.04.2005, passed by the learned 1st Additional Sessions Judge, Nawabshah in Sessions Case No.118 of 2002 arising out of the FIR No.20/2002 for an offence under sections 302, 114, 147, 148, 149 PPC registered at PS Daulatpur, whereby the appellant was convicted under section 302 (b) PPC for murdering deceased Muhammad and sentenced to suffer Rigorous Imprisonment for life and pay Rs.100,000.00 [Rupees one hundred thousand only] to the heirs of deceased as compensation or in default thereof to suffer six months more. However, the benefit of section 382-B Cr.P.C. was also extended to the appellant. Whereas, co-accused namely Akbar alias Mirchoo, Haji Moosa, Pir Bux and Allah Jurio involved in the instant crime were acquitted of the charge.

2. The brief facts of the prosecution case as depicted in the FIR lodged by complainant Jam on 07.04.2002 are that he and his cousin (brother-in-law) has got agricultural land in deh Nim and deh Malwah respectively and they reside in one and the same courtyard. Adjacent to the land of Muhammad, appellant Amir Bux Kalhoro has got 14 acres of land which was taken on

lease by Muhammad for two years and after completing one year, there arose a dispute between Muhammad and appellant Amir Bux as Muhammad was demanding Rs.36000/- from Amir Bux on which Amir Bux annoyed. On 06.04.2002, complainant, his cousin Muhammad relative Mohabat and others early in the morning went to the land of Muhammad for installing tube-well. After finishing work, complainant, Muhammad and others started to proceed for their village and when at about 11.30 p.m. they reached near the house of accused Amir Bux, all of sudden accused Amir Bux with gun, Pir Bux, Allah Jurio and Akbar alias Mirchoo having hatchets and Muhammad Moosa empty handed emerged from their houses. Accused Muhammad Moosa instigated accused Amir Bux, who fired at Muhammad which hit him and he fell down on the ground and within their sight he expired at the spot. Then the complainant leaving PWs Muhabat and Panah over the dead body of Muhammad went to lodge the report against the accused.

3. After observing all formalities, recording evidence of prosecution witnesses, statements of accused in terms of section 342 Cr.P.C., the learned trial Court convicted and sentenced the appellant/accused Amir Bux in the manner as stated above and acquitted co-accused namely Akbar alias Mirchoo, Haji Moosa, Pir Bux and Allah Jurio.

4. Learned counsel for the appellants/accused contended that despite the prosecution has failed to establish the case against the accused and the learned trial Court did not appreciate the fact of acquitting the co-accused namely Akbar alias Mirchoo, Haji Moosa, Pir Bux and Allah Jurio on the same set of evidence, therefore, conviction and sentence to the present appellant is not sustainable under the law. However, as the incident is taken place promptly and no preplan for committing murder of deceased has been established by the prosecution and the accused are being dragged in the instant case since 2002, as such, if the quantum of sentence i.e. imprisonment for life being severe is considered to lesser considering the pendency of case for the offence pertaining to the year 2002, he would have no

objection. 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 and raised no objection for conversion of the sentence from section 302 (b) PPC to section 302 (c) PPC.

5. I have heard learned counsel for the parties and have minutely gone through the material available on record with their able assistance. From perusal of the record, it is crystal clear that the deceased Muhammad died to an unnatural death by sustaining firearm injuries. The prosecution has established its case through all modes of evidence which includes ocular, circumstantial as well as medical evidence against the appellant Amir Bux. So far the acquittal of co-accused namely Akbar alias Mirchoo, Haji Moosa, Pir Bux and Allah Jurio on the same set of evidence is concerned, suffice to say that the role attributed upon them is quite different to that of present appellant, as such, disbelief of ocular evidence in respect of some of the accused cannot lead for discarding the entire evidence especially when the appellant Amir Bux had specifically been alleged to have made fire-shot upon deceased Muhammad; consequently, the present appellant cannot be exonerated from the charge. However, in the entire evidence of prosecution, nothing has come on record, which shows that the accused have committed the murder of deceased by preplanning or intention. In this regard, the learned trial Court in its judgment has observed that no evidence of premeditation or preknowledge regarding commission of crime has been produced against the accused namely Akbar alias Mirchoo, Haji Moosa, Pir Bux and Allah Jurio. Meaning thereby, there was no preplanning or intention of the accused persons. As such, I also 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 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]**.

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. Keeping in view the above discussion as well as considering the dragness of the appellant in the instant case since 2002, the appeal is partly **allowed**, the conviction of the appellant 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 to R.I for ten years and to pay Rs.100,000.00 [Rupees one hundred thousand only] to the heirs of deceased as compensation or in default whereof to suffer S.I for six months more. 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.

8. It would be very essential to mention here that as per report dated 26.05.2011 submitted by the Superintendent Central Prison, Hyderabad, the appellant has served out his sentence eleven years, nine months and twenty two days including remission, as such, after modification of impugned judgment, the appellant has completed his sentence including the sentence to be suffered in case of non-payment of compensation amount. Appellant is present on bail, therefore, 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.

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

JUDGE