

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

Criminal Jail Appeal No.S-182 of 2006

Appellants: Sharif @ Wadero and Qadir Bukhsh @ Ghulam Qadir (on bail) through Raja Hansraj Naurant, Advocate.

Respondent: The State through Mr. Abdul Waheed Bijarani A.P.G. Sindh.

Date of hearing: **25.08.2022.**

Date of Judgment: **25.08.2022.**

J U D G M E N T

AMJAD ALI SAHITO, J. Being aggrieved and dissatisfied with the judgment dated 06.06.2006, passed by the learned Sessions Judge, Sanghar in Sessions Case No.428 of 2001 arising out of the FIR No.51/2001 for an offence under sections 302, 34 PPC registered at PS Khipro, whereby the appellants were convicted under section 302 (b) PPC for murdering deceased Akbar and sentenced to suffer Rigorous Imprisonment for life and pay fine of Rs.1,00,000.00 [Rupees one hundred thousand only] to the heirs of deceased. However, the benefit of section 382-B Cr.P.C. was also extended to the appellants.

2. At the very outset, learned counsel for the appellant states that due to heavy rain appellant / accused Sharif @ Wadero could not reach before this Court, as such, he seeks condonation. Keeping in view the heavy rainfall, absence of appellant / accused Sharif @ Wadero is condoned.

3. The brief facts of the prosecution case as depicted in the FIR are that on 15.07.2001 at 02.00 p.m. complainant Khuda Bux Shar lodged FIR at PS Khipro stating therein that

about 7 / 8 months wife of accused Sharif @ Wadero Brohi had eloped with Raees, the brother of deceased Muhammad Akbar Shar, however, on a private settlement, she was returned to her husband, as such, the relations between them were strange and Akbar with his family shifted to Karachi. It is alleged that on 14.07.2001 Akbar arrived to the complainant from Karachi to work as labour and on 15.07.2001 in the morning the complainant along with PWs Aayo, Muhammad Uris and Akbar after finishing work from Khipro when proceeded back to their village while passing through Kazi Muhallah in front of main gate of the Otaq of Kazi Faiz Muhamamd, they found that accused Qadir Bukhsh Brohi, Sharif @ Wadero Brohi, Dad Karim Brohi and Sarwar Brohi were un-loading the mud from the tractor-trolley with "Belchas" (spades) at that moment Akbar had gone towards the accused in order to shake hand with them but accused Sharif, Qadir Bukhsh and Dad Karim started inflicting injuries with Belchas to deceased Akbar, resultant he expired.

4. After observing all formalities, the learned trial Court convicted and sentenced the appellants / accused in the manner as stated above and acquitted co-accused Sarwar.

5. Learned counsel for the appellants / accused contended that the incident is taken place promptly when the deceased himself came to the accused in order to shake hands, who having strange relations with accused on account of a lady, as such, there was no preplan for committing murder of deceased. In this regard, learned counsel has also invited attention of this Court to the contents of FIR as well as evidence of eyewitnesses. He submits that 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 A.P.G. Sindh supported the impugned judgment, however, after going through the record does not oppose the contentions as advanced by learned counsel for the appellants / accused.

6. 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 was promptly murdered when he went to the accused in order to shake hands with them despite fact that their relations were not good on account of eloping wife of the accused Sharif @ Wadero with Raees, the brother of deceased. In the entire evidence of prosecution, nothing has come on record, which shows that the accused have committed the murder of deceased by preplanning. As such, 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].

7. 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.”

8. 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 to R.I for ten years and to pay compensation of Rs.50,000/- (Rupees fifty thousand only) to the legal heirs of deceased as provided under section 544-A Cr.P.C. or in case of 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 appellants.

9. 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 their sentence more than 12 ½ years physically and earned remission of about four years, three

months and eight days, 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.

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

JUDGE