

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD.

Cr. Acquittal Appeal No.D-05 of 2015  
Criminal Revision Application No.D-85 of 2015  
Criminal Jail Appeal No.S-61 of 2015

Present:-

Mr. Justice Muhammad Iqbal Kalhoro.  
Mr. Justice Khadim Hussain Soomro.

Date of hearing: 19.04.2023 & 27.04.2023  
Date of decision: 01.06.2023  
Appellant / Respondent: Roshan Ali, through Mr. Ghulamullah Chang advocate.  
Complainant/Applicant/Appellant: Jojo, through Mr. Sajjad Ahmed Chandio advocate.  
Respondents/accused: Muhammad Raheem and Ahmed Junejo through Mr. (Cr. Acq. Appeal No.D-05/2015)  
The State: Through Mr. Shahzad Saleem Nahiyoon, Addl.PG.

JUDGMENT

**MUHAMMAD IQBAL KALHORO**, J:- All the three captioned cases have arisen out of a judgment dated 28.02.2015 passed by learned Sessions Judge Badin in Sessions Case No.178 of 2011 bearing Crime No.87/2011 registered u/s 302, 324, 337-F(i), 337-L(ii), 504 PPC at PS Kario Ganhwar, whereby appellant Roshan Ali has been convicted and sentenced u/s 302(b) PPC to imprisonment for life and to pay compensation of Rs.200,000/- to the legal heirs of deceased u/s 544-A CrPC, in default thereof to suffer RI for two years more, with benefit of section 382-B CrPC. Whereas, co-accused Muhammad Rahim and Ahmed have been acquitted on a benefit of doubt.

2. Facts of case in brief are that on 03.08.2011 complainant had gone to 'Morjhar' for his personal work and at 1430 hours received a phone call from Ganga Ram that they had brought cotton crop for selling at Imam Wah city. After selling the same, when he along with Khemmoon and Dhanji was going back on a motorcycle, and reached Imam Wah Stop of School near Badin Golarchi Road Deh Manyoon Taluka Shaheed Fazil Rahu, accused Roshan Ali, Muhammad Rahim and Ahmed armed with hatchets got them down from the motorcycle by

force. First accused abused them and then accused Roshan caused a sharp side hatchet blow on left side of the chest of Khemoon to murder him. Accused Muhammad Rahim caused a sharp side hatchet blow to Dhanji hitting his back and accused Ahmed caused a back-side-hatchet blow to Dhanji hitting his left arm. Hearing such report, complainant arrived at place of incident, and found Khemoon dead with an injury on his chest and Dhanji injured having multiple injuries on his body. He went to Police Station and lodged FIR.

3. In the trial, prosecution, to prove its case, has examined 10 witnesses, who have produced all the necessary documents: FIR, postmortem report, medical certificate, roznamcha entries, inquest report, memos of dead body, injuries, arrest of accused, place of incident, chemical examiner's report qua clothes of deceased, recovery of certain articles from the place of incident etc. After prosecution evidence, statements of accused u/s 342 CrPC were recorded. They have denied the prosecution case and have pleaded innocence. However, accused Roshan examined himself on oath and examined Muhammad Bux and Haji Shabir as his defense witnesses. The trial court vide impugned judgment has convicted and sentenced appellant Roshan Ali in the manner as stated above and acquitted the accused Muhammad Rahim and Ahmed by giving them benefit of doubt.

4. Complainant by means of captioned Cr. Revision Application No.D-85 of 2015 has prayed for enhancement of sentence awarded to respondent/appellant Roshan Ali from life imprisonment to death sentence and by means of captioned Criminal Acquittal Appeal No.D-05 of 2015 has challenged acquittal of respondents/accused Muhammad Rahim and Ahmed. Whereas, appellant Roshan Ali by means of Criminal Appeal No.S-61 of 2015, has challenged his conviction and sentence as above.

5. We have heard all the three matters together. Learned counsel for appellant Roshan Ali has argued that appellant is innocent and has been falsely implicated in this case; that prosecution has failed to show any motive of the incident; that it does not appeal to the common sense that without any motive or serious enmity appellant has committed murder of the deceased; that there are contradictions in the evidence of witnesses which create a reasonable doubt in the prudent mind; that except oral account no supporting evidence has been

collected by the prosecution against appellant; that evidence of the Medico Legal Officer shows that he had received dead body at about 04:55 pm on 03.08.2011 whereas memo of dead body was prepared at about 1710 hours (05:10 pm) showing presence of dead body at the spot. This anomaly over presence of dead body at the same time at hospital which is 35 km away and place of incident creates doubt over the prosecution case; that injuries on the person of Dhanji are doubtful as the Medico Legal Officer has stated that these injuries can be fabricated; that the doctor's evidence is sufficient to establish that PW Dhanji had fabricated the injuries upon himself in order to show his presence at the spot, where otherwise he was not available; that prosecution has failed to establish true manner in which the incident occurred and which has dealt a serious blow to authenticity of the prosecution case. However, in the last leg of his arguments learned defense counsel has stated that the deceased had received only one injury and admittedly no motive has been alleged by the prosecution; and there is no evidence that the alleged incident was committed by the appellant with premeditation and pre-intention, therefore, even if the story of prosecution is believed, despite highlighted anomalies, in toto the case u/s 302(c) PPC is made out and not the case u/s 302(b) PPC. In support of his arguments, learned counsel has relied upon 2011 SCMR 323, 2018 SCMR 326, 2011 SCMR 1190, 2015 SCMR 315, PLD 1973 Supreme Court 321, 2013 SCMR 383, 2010 SCMR 1009, 2019 SCMR 631, 1990 PCrLJ 1018, 2011 SCMR 474, 2019 SCMR 315, 2015 SCMR 1142, 2020 SCMR 219, 1995 SCMR 127, 2021 SCMR 471, 2019 SCMR 652, 2019 SCMR 872, 2022 SCMR 1328, 2022 SCMR 88, 2022 SCMR 1085, 2020 SCMR 1185 and PLD 2020 Supreme Court 523.

6. Learned counsel for complainant has on the contrary prayed for enhancement of sentence of life imprisonment to death appellant to Roshan Ali and reversal of acquittal of respondents Muhammad Raheem and Ahmed Junejo into conviction and sentence u/s 302 (b) PPC stating that there is sufficient evidence against them. Further stating, when the trial court has concluded that offence has been proved to have been committed by appellant Roshan Ali, it ought to have awarded normal penalty of death to him. He has relied upon 2022 SCMR 1577, 2022 SCMR 1882, 2022 SCMR 690, 2021 SCMR 149, 2022 SCMR 1907, 2022 SCMR 1931, 2004 PLD SC 663, 2022 MLD 63, 2022 PCrLJ 695 and 2022 PCrLJ Note 43.

7. Learned Additional Prosecutor General Sindh has supported the impugned judgment, opposed the revision application filed for enhancement of sentence of appellant Roshan Ali, acquittal appeal against Muhammad Raheem and Ahmed Junejo, and has further conceded that since the victim received only one injury, his case falls within the scheme u/s 302(c) PPC. He has relied upon 2023 SCMR 117, 2022 SCMR 1882, and 2022 SCMR 1187.

8. We have considered above arguments and perused material available on record including the case law cited at bar. In this case prosecution has examined in all 10 witnesses who have produced all the relevant papers and articles to prove the case. Out of whom, PW-3 Jojo (Ex.14) is the complainant, PW-4 Dhanji (Ex.15) and PW-5 Ganga Ram (Ex.16) are the eyewitnesses. Evidence of complainant is hearsay. He is not the eyewitness and was informed of the incident and the role of the appellant by PW Ganga Ram. Acting on such information, he had reached the place of incident and seen Khemoon dead and Dhanji injured bleeding from injuries caused by the hatchet. He has not described any motive leading up to the incident in his evidence.

9. PW-4 Dhanji is the eyewitness. He has stated that on the fateful day he with the deceased and PW Ganga Ram was on a motorcycle on their way back to home. When they reached near a School at Imam Wah, they were waylaid by appellant Roshan Ali, Muhammad Raheem and Ahmed Junejo. Appellant Roshan Ali caused a sharp side hatchet blow to Khemoon on his chest whereas accused Muhammad Raheem caused him hatchet blows on his back. As a result, he passed out and came to senses in Taluka Hospital Golarchi. He too has described no motive of the incident or what spurred the appellant and others to launch an assault on them. He has admitted in cross-examination that there was no enmity of appellant Roshan Ali with them. In reply to a question in cross-examination, he has nonetheless revealed that appellant Roshan Ali had closed water to their lands and they had moved an application to some Sohail Mirza, and others (private persons) against him. But, in any case, he has not bracketed such fact as a motive for the incident.

10. PW-5 Ganga Ram has repeated the same story in his evidence that appellant and others had waylaid them on the ill-fated day when he, PW Dhanji and deceased Khemoon riding on a motorcycle were near a School at Imam Wah. Appellant Roshan Ali caused a sharp

side hatchet blow to Khemmoon on his left side. He has also failed to assign any reason prompting the appellant to commit the offence. PW-1 Dr. Muhammad Siddique, the one who had conducted postmortem of the deceased, has noted down, on the deceased, an incised wound measuring 16.5 cm x 6.5 cm cutting vertebrae of the left side of thorax cavity anteriorly with sign of profuse bleeding. He has opined that that injury was caused by a sharp cutting weapon, time between injury and death was immediate and that the death occurred due to hemorrhage and shock as a result of the said injury sufficient to cause death in the ordinary course of life. From the medical evidence as well as eye account, it is proved that deceased died unnatural death by an injury caused to him by a hatchet and that injury was inflicted to him by appellant Roshan Ali.

11. Insofar as injuries to PW Dhanji is concerned, PW-2 Dr. Nek Muhammad, Senior MO Taluka Hospital Golarchi, in his cross examination has disclosed that injury to him was caused by a pointed weapon, further that this injury can be fabricated, and that injury No.2 can be self-suffered. In our view, this appears to be the reason why the two respondents in Criminal Acquittal Appeal No.D-05/2015 namely Muhammad Raheem and Ahmed Junejo have been acquitted by the trial court. In presence of such evidence, coupled with the fact that the witnesses have said that PW Dhanji was injured by a hatchet but the doctor has stated that injury was caused to him by a pointed weapon – a pointed weapon cannot be aligned with a hatchet at least. And further that fabrication of such injury and injury No.2 being self-suffered cannot be ruled out. No case for interference to upset the finding of acquittal in favour of Muhammad Raheem and Ahmed Junejo recorded by the trial court in the impugned judgment is made out.

12. As for the case against appellant Roshan Ali is concerned, no doubt the witnesses have supported the role played by him at the time of incident. But the motive part of the story has not been revealed by any one of them including the complainant. Nor the fact that drove appellant to take life of the deceased. It appears that either the prosecution involuntarily has not come up with the facts happened immediately before the incident shoving the appellant to resort to violence, or a deliberate attempt, for the reasons not known, has been made to conceal the motive/reason of the offence. But, in any case, the motive part of the story and immediate occurrences resulting

into the incident are shrouded in a mystery. It is also apparent from the record that appellant caused only one injury to the deceased. Although the deceased was at his mercy but he did not repeat his act of causing hatchet blows to him. This fact itself indicates, not least because no reason for the offence has been given by the prosecution itself, that the occurrence took place all of sudden on spur of moment without any premeditation and preparation on the part of the appellant to cause death of the deceased. There appears to be no enmity between the parties which is even admitted by the witnesses. The Supreme Court in the case of *Muhammad Abbas and others versus The State* (2023 SCMR 487) considering all these factors: occurrence happening on spur of the moment, case of a single injury, no attempt on the part of accused to repeat his act, absence of motive part of the story, no sign of preparation or pre-meditation by the accused to commit the offence, the prosecution's failure to reveal circumstances happening immediately before the occurrence, and lack of deep-rooted enmity between the parties, has taken a lenient view and has converted the conviction of petitioner from section 302(b) PPC to 302(c) PPC and reduced the period of sentence. In four other cases at least reported as 2022 SCMR 1328, 2022 SCMR 1085, 2022 SCMR 2143 and 2022 SCMR 1187, in consideration of all above stated factors, the Supreme court has consistently maintained this view and has altered the conviction from section 302(b) PPC to section 302(c) PPC and reduced the sentence from life imprisonment to 14 years.

13. Therefore, it seems to be settled now that the offence of murder which is committed by an accused without premeditation or preparation and occurs at the spur of moment, and without any deep rooted enmity between the parties, and the accused does not repeat his act of causing (fire) injury to the victim would not entail punishment u/s 302(b) PPC but a sentence u/s 302(c) PPC. In the present case also as discussed above all these factors are floating undeniably on the record. Therefore, following the ratio laid down by the Supreme Court in above case law, and in consideration of available evidence on record, we too have decided to convert conviction of the appellant from section 302(b) PPC to section 302(c) PPC and reduce his sentence from life imprisonment to the period already undergone by him. The jail role dated 25.05.2023 indicates that he has remained in jail for 11 years 09 months 16 days and has earned remission of 09 years 11 months 04 days. Total sentence he has suffered is thus 21 years 08 months 20

days, which is ordered to be his total sentence in the light of above reasons. The appellant is, however, directed to pay Rs.2,00,000/- (rupees two lacs) as compensation u/s 544-A CrPC to the legal heirs of deceased, in default, however he shall remain in jail for 06 months more.

14. With above modification and reduction in sentence of appellant Roshan Ali, the Criminal Jail Appeal No.S-61 of 2015 is dismissed. At the same time, both Criminal Acquittal Appeal No.D-05 of 2015 and Criminal Revision Application No.D-85 of 2015 are also dismissed.

The Criminal Jail Appeal No.S-61 of 2015, Criminal Acquittal Appeal No.D-05 of 2015, and Criminal Revision Application No.D-85 of 2015 and are disposed of accordingly.

JUDGE

JUDGE