

## IN THE HIGH COURT OF SINDH KARACHI

### **CIMINAL JAIL APPEAL NO.601 OF 2017**

Appellant : Abdullah  
Through Ms. Fareeda Mangrio  
Advocate

Respondent : The State  
through Mr. Talib Ali Memon,  
Assistant Prosecutor General for  
the State

Date of hearing : 16<sup>th</sup> October 2023

### **JUDGMENT**

**Omar Sial, J.:** Abdullah Zaur tied his buffalo against the wall of Zulfiqar Ali Zaur's home. This resulted in an exchange of harsh words between Abdullah and Zulfiqar (Abdullah's brother). Abdullah's father (Ali Mohammad) instigated Abdullah, making Abdullah hit Zulfiqar on his head with a hatchet. Sarkar Ahmed and Junaid took Zulfiqar to the hospital in Bithoro, where he was provided first aid. Zulfiqar did not respond well to the treatment so the next day, his family took him to the Daro police station where they obtained a letter and went to a Rural Health Centre in Darro. The doctors at the RHC asked his family to take Zulfiqar to a hospital in Bithoro, where they had first taken Zulfiqar after the incident. The hospital in Bithoro referred Zulfiqar to the Civil Hospital in Hyderabad, where on 09.08.2013, Zulfiqar expired. F.I.R. No. 31 of 2013 was registered under sections 302, 114, 34 PPC at the Darro police station.

2. Ali Mohammad, the appellant's father, was declared an absconder, whereas Abdullah pleaded not guilty and claimed trial. At the end of the trial, the learned Additional Sessions Judge, Sajawal, on 15.11.2017, convicted Abdullah for having committed an offence

under section 302(b) P.P.C. and sentenced him to life in prison as well as directed him to pay a compensation of Rs. 100,000 to the legal heirs of the deceased Zulfiqar.

3. Learned counsel appearing for Abdullah prayed that she would not argue on merits but would request that the sentence awarded to Abdullah be reduced to the period he has already undergone in prison. The jail roll shows that Abdullah has completed 19 years of his sentence, which period also includes the remissions granted to him. Learned Additional Prosecutor General argued that keeping in view the circumstances of the case and the evidence led at trial, he would have no objection on behalf of the State if the sentence awarded to Abdullah was treated as undergone. Nobody appeared on behalf of the complainant despite notice. My views and observations are as follows.

4. I tend to agree with the position taken by the learned Additional Prosecutor General. The F.I.R. and the evidence led at trial show that the murder was not pre-planned or pre-meditated; the complainant alleged no motive. The hatchet with which he hit Zulfiqar was already with Abdullah when he tied the buffalo to the wall of Abdullah's home. Only one strike was made. Evidence shows that delays in providing medical treatment may also have contributed to blood loss, leading to death. It would have been just and fair if Abdullah was convicted under section 302(c) P.P.C. and not section 302(b) P.P.C.

5. There is another aspect of the case which has also caught my attention. The complainant's own two brothers, namely Sarkar Ahmed and Jamshed, were the ones who had taken the injured Zulfiqar to the hospital. At trial, however, Sarkar Ahmed testified against the complainant and said that the real issue was a plot of land which Abdullah's mother owned and that in the fight which had ensued, it was the complainant himself who accidentally had hit the deceased on his head. The complainant had subsequently taken over the plot of land in question.

6. The other brother, i.e. Junaid, did not appear as a witness for the prosecution. No reason was given for his absence. In such a situation, the presumption in Article 129 illustration 9(g) of the Qanun-e-Shahadat Order, 1984 would come into play, and it would be presumed that even if he had been examined, Jamshed would not have supported the prosecution case.

7. Yet another aspect of the case is that Zulfiqar's family did not permit a post-mortem of the deceased, so for all intent and purpose, the real cause of death was not proved at trial. According to the complainant party, the deceased was taken twice to the hospital in Bithoro for treatment; however, Abdul Qadir, the Medical Officer (PW-6) testified that *"I examined the injured Zulfiqar once on 07.08.2023 and thereafter he was never brought before me."* The record shows that Zulfiqar was not taken to the hospital in Hyderabad by the complainant party on the pretext that they did not have any money. This is unusual as the prosecution's own witness, Abdul Qadir, testified that treatment was free at the hospital in Bithoro and in the hospital in Hyderabad. The prosecution relied upon a death certificate produced by Abdul Qadir, which the hospital in Hyderabad ostensibly issued. It is also pertinent to note that the Police Surgeon, Hyderabad reported vide letter dated 09.02.2022 that a medico-legal record of the treatment given to the deceased was not found in the department's record. He verified, however, that a death certificate was issued.

8. In an injured condition, the deceased was taken to the Daro police station on 08.08.2013, where prosecution witness Niaz Mohammad (PW-7) examined his injury and prepared a memo of injuries. Azeem and Khuda Bux witnessed the memo. Khuda Bux (who appeared as PW-8) testified that it was incorrect that he had witnessed the inspection of injuries. Khuda Bux was declared hostile, yet the prosecution did not think it appropriate that the second witness, Azeem, be examined. The case was badly prosecuted, leaving many loopholes.

9. Given the above, for the safer administration of justice the appeal is dismissed however the conviction is converted from one under section 302(b) to section 302(c) P.P.C. and the sentence is reduced to the one that the appellant has already undergone. The compensation amount is reduced to RS. 25,000. If the appellant does not pay the compensation he will have to remain in jail for a further period of one month. Once the compensation is paid or the imprisonment in lieu of the compensation is completed, the appellant may be released if not required in any other custody case.

**JUDGE**

