

IN THE HIGH COURT OF SINDH, AT KARACHI

Criminal Jail Appeal No. 314 of 2021

Appellant: Mukhtiar Ahmed through Mr. Muhammad Hanif Noonari, advocate

The State: Mr. Khadim Hussain Khuharo, Addl. PG for the State

Date of hearing: 26.09.2023

Date of judgment: 26.09.2023

J U D G M E N T

IRSHAD ALI SHAH, J- The appellant is alleged to have committed murder of Shiraz Alam by causing him knife injury, for that he was booked and reported upon by the police. On conclusion of trial, he was convicted under Section 302(b) PPC and sentenced to undergo life imprisonment as *Tazir* and to pay compensation of Rs.400,000/- to the legal heirs of the deceased and in default whereof to undergo simple imprisonment for one year with benefit of section 382(b) Cr.P.C by learned IV-Additional Sessions Judge, Karachi West, vide judgment dated 30.04.2021, which is impugned by him before this Court by preferring the instant Crl. Jail Appeal.

2. At the very outset, it is stated by the learned counsel for the appellant that the incident has taken place as a result of sudden flare up with no motive or ill-will; the appellant inclusive of remission has already undergone more than 13 years of the sentence, therefore, under instructions, he would not press the disposal of instant Criminal Jail Appeal before this Court on merits, provided the sentence awarded to the appellant is reduced to one which he has already undergone by modifying the penal section, which is not opposed by learned Addl. PG for the State.

3. Heard arguments and perused the record.

4. It is inter-alia stated by complainant Aftab that an altercation took place between the appellant and the deceased before the incident; his version takes support to large extent from the evidence of PW Habibullah, which prima facie suggests that there was no motive of the incident; it occurred as a result of sudden flare up on account of altercation, which constitutes an offence punishable u/s 302(c) PPC, therefore, the conviction awarded to the appellant u/s 302(b) PPC is modified with one u/s 302(c) PPC, consequently, he is sentenced to undergo rigorous imprisonment for 10 years and to pay compensation of Rs.100,000/- to the legal heirs of the deceased and in default whereof to undergo simple imprisonment for 01 month with benefit of sec; 382(b) Cr.P.C.

5. In the case of *Zeeshan @ Shani vs. The State (PLD 2017 SC 165)*, it has been held by the Apex Court 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.”

6. The instant criminal jail appeal is disposed of subject to above modification.

JUDGE