

# IN THE HIGH COURT OF SINDH, AT KARACHI

Criminal Appeal No. 511 of 2019

Appellant: Ibrar Malik @ Gogi through Ms. Shaista Gul,  
advocate

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

Date of hearing: 12.10.2023

Date of judgment: 12.10.2023

## J U D G M E N T

**IRSHAD ALI SHAH, J-** The appellant is alleged to have committed murder of Kamran by causing him knife injuries, for that he was booked and reported upon by the police. On conclusion of trial, he was convicted under Section 302 PPC, without specifying the particular clause and sentenced to undergo life imprisonment and to pay compensation of rupees three million to the legal heirs of the deceased and in default whereof to undergo simple imprisonment for 06 months with benefit of section 382(b) Cr.P.C by learned 1<sup>st</sup> - Additional Sessions Judge/MCTC, Malir, Karachi vide judgment dated 01.08.2019, which he has impugned before this Court by preferring the instant Criminal Appeal.

2. At the very outset, it is stated by the learned counsel for the appellant that the appellant and the deceased being teenager at the time of incident had an scuffle with each other adjacent to a video shop, probably on account of playing the video game, it was sudden flare up with no motive or ill-will, therefore, under instructions, she would not press the disposal of instant Criminal Appeal before this Court on merits, provided the sentence awarded to the appellant is modified with one u/s. 302(c) PPC, which is not opposed by learned Addl. PG for the State.

3. Heard arguments and perused the record.

4. Admittedly, the appellant and the deceased at the time of incident were below the age of 16 years. It is also an admitted that there was no motive of the incident. As per complainant Rizwan Mustafa Shah the appellant and the deceased had a scuffle with each other which resulted in causing of knife injuries by the appellant to the deceased, who by sustaining such injuries died. If such version of the complainant is taken into consideration, then it prima facie suggests that the incident was result of sudden flare up without ill-will or premeditation, which constitutes an offence punishable u/s 302(c) PPC, therefore, the conviction awarded to the appellant for the said offence is modified with one u/s 302(c) PPC, consequently, the appellant for the said offence is sentenced to undergo rigorous imprisonment for 10 years and to pay compensation of rupees one lac to the legal heirs of the deceased and in default whereof to undergo simple imprisonment for 01 month with benefit of section 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 appeal is disposed of subject to above modification.

JUDGE