

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

Criminal Appeal No.S-120 of 2003

Date of hearing: 24.11.2017

Date of decision: 24.11.2017

Appellant: Kashif through Mr. Farhad Ali Abro, Advocate.

The State Through Syed Meeral Shah Addl.P.G.

Complainant: Muhammad Arif through Mr. Nisar Ahmed Durrani,
Advocate.

J U D G M E N T

MUHAMMAD IOBAL KALHORO,J:-Appellant Kashif has impugned the judgment dated 01.07.2003 passed by VI-Additional Sessions Judge, Hyderabad whereby he was convicted under section 302(b) PPC and sentenced to suffer imprisonment for life and to pay compensation of Rs.50,000/- to the legal heirs of deceased and in default thereof to suffer S.I for 06 months. The appellant was also convicted and sentenced under section 337-F(ii) PPC to suffer R.I of 2 years and fine of Rs.20,000/- as daman to injured Asif and in default thereof to suffer S.I for 2 months. He was, however, extended benefit of section 382-B, Cr.P.C.

2. The brief facts of the prosecution case are that deceased Faheem and his friends Aqeel Qazi and Asif for the purpose of arranging a taxi car for their visit on the occasion of 14th August, 2001 talked with taxi driver Asif Raza and as an advance Rs.100/- was paid to him by Faheem out of settled fair of Rs.1800/-. Thereafter, when accused Asif failed to provide the required car, Faheem asked him to return the advance. On 13.08.2001, Faheem and his friends namely Asif, Aqeel and Arif were going to Ayoob hotel for having a tea when at about 8-15 p.m they met with accused Asif, who offered another taxi to Faheem. But, he refused to accept the same and demanded back advance, on which, accused Asif Raza became annoyed and started slapping Faheem, and took out a screw driver from his pocket, but he was caught hold by the complainant. In the meantime, accused Kashif, who had a clip knife in his hand, started causing injuries to Faheem on chest and arms. It is further alleged that accused Kashif also caused injuries to Asif and Aqeel. In the meantime, many people gathered there and both

the accused went away to their house. Meanwhile, Faheem, Aqeel, and Asif were shifted to hospital where Faheem succumbed to the injuries and died. Resultantly, present F.I.R. was registered.

3. After registration of F.I.R., the police started investigation and after usual investigation the challan was submitted leading to commencement of the trial against the accused.

4. A formal charge was framed against the appellant Kashif @ Pathan and co-accused Asif Raza at Ex.2, who pleaded not guilty and claimed trial.

5. In the trial, the prosecution has examined Complainant Muhammad Arif as Ex.6, P.W Muhammad Asif Qazi as Ex.07, P.W Kashif as Ex.9, P.W Dr. Zawar Hussain Shah as Ex.16, P.W Mr. Zeeshan Akhtar Khan, Civil Judge, as Ex.18, P.W M.O Shahid Islam Junejo as Ex.21, P.W HC Muhammad Tufail as Ex.27, P.W Hassan Ali, Tapedar, as Ex.29, P.W I.O Samandar Khan as Ex.31. They have produced all the necessary documents viz. F.I.R., statements under section 164 Cr.P.C of the witnesses, mashirnamas of arrest of accused, mashirnama of dead body, medico legal certificates, mashirnama of place of incident, mashirnamas of recoveries, etc.

6. Statements of appellant and co-accused were recorded under section 342 Cr.P.C in which they have denied the allegations and pleaded innocence. They, however, neither examined themselves on oath nor led any evidence in their defense.

7. The learned trial Court after concluding the evidence and hearing the parties, while acquitting the co-accused, convicted the appellant in the terms as stated above.

8. Mr. Farhad Ali Abro learned Counsel for appellant at the very outset has submitted that he would not press this appeal on merits, if the conviction and sentence of the appellant is altered and reduced to the period already undergone by him because he has already remained in jail substantially for more than 16 years and has earned remission of more than five years. In support of his arguments, he has relied upon the Rule 140 of the Prisons Rules, 1978 and an unreported judgment dated 31.05.2017 of this Court passed in Criminal Special ATA Appeal No.D-24 of 2005. In addition to above, he has submitted that the incident does not seem to be pre-planned or premeditated but appear to be a result of a minor skirmish between the parties. Moreover, during investigation no crime weapon was recovered from him, therefore, conviction of the appellant

under section 302(b) PPC is not justifiable and it may be converted under section 302(c) PPC.

9. Learned Counsel for the complainant although has opposed the request of learned defense Counsel but has not been able to controvert the contentions raised by the defense Counsel.

10. Learned Additional Prosecutor General Sindh on the contrary has recorded his no objection, if the conviction and sentence of the appellant is reduced to the period already undergone by him.

11. I have considered the submissions of the parties and have perused the material available on record. The prosecution in all has examined nine (09) witnesses. Complainant Muhammad Arif(Ex.06) and P.W-2 Muhammad Asif (Ex.07) are the eye witnesses of the incident as both of them were with the deceased. They have described the incident in detail and have materially supported the case as narrated in the F.I.R. P.W-3 namely Kashif (Ex.8) is the mashir of place of incident, inspection of injuries of both the injured and the deceased, etc. P.W-4 Dr. Zawar Hussain(Ex.16) is the medico legal officer; he has conducted the postmortem of the deceased. Per his evidence, there were four injuries on the person of the deceased and the injury No.1 & 2 were incised wounds sufficient to cause death in the ordinary course of nature. P.W-5 Mr. Zeeshan Akhtar Khan is the Civil Judge who recorded statements of witnesses under section 164 Cr.P.C. He has produced these statements. P.W-6 Medical Officer Shahid Islam Junejo (Ex.21) who has produced medical certificates of injured witnesses. P.W-7 HC Muhammad Tufail (Ex.27) is the mashir, in his presence co-accused Asif Raza was arrested. P.W-8 Hassan Ali (Ex.29) is tapedar, he has prepared the sketch. P.W-9 Samander Khan (Ex.31) is the Investigating Officer.

12. Prosecution witnesses have supported each other on every material aspect of the case. They have been subjected to a lengthy cross examination but no any discrepancy or omission has been brought on record. Their evidence is further corroborated by the medical evidence. The judgment of the trial court is based on sound reasoning, therefore, does not call for any interference insofar as the conviction of the appellant is concerned.

13. However, in terms of Rule 140 of Pakistan Prison Rules 1978, the case of all prisoners sentenced to imprisonment for life (25 years) shall be referred to Government through the Inspector General, after they have served fifteen years

substantive imprisonment for consideration with reference to section 401 of the Criminal Procedure Code, which envisages power of the Provincial Government to suspend, or remit the whole or any part of the punishment that accused has been sentenced to. Therefore, it will not be unfair to consider the request of learned defense Counsel in this backdrop. In addition, I have noted that the incident does not appear to be premeditated or preplanned. By chance, the complainant party and the accused happened to be at the place of incident where on account of a petty matter of returning Rs.100/- given to accused Asif as an advance, a quarrel took place and in the heat of moment the appellant caused clip knife blows to the deceased and injured. Such motive for the incident appears to be not only weak but does not provide any sufficient cause to the appellant to commit murder of the deceased. The crime weapon was not recovered from the appellant during investigation which could also be considered a mitigating circumstance in his favour. More so, the screwdriver recovered from co-accused Asif was found bloodstained as per FSL report at Ex.34, which is strange phenomenon because neither in the F.I.R. nor the witnesses have alleged in their evidence that said screwdriver was used by co-accused Asif and through which any injury was caused to the deceased or witnesses. Therefore, the findings recorded in the FSL report to the effect that the said screwdriver was stained with human blood does not correlate with the prosecution case. The Honourable Supreme Court while considering almost the similar facts and circumstances in the case of Zeeshan @ Shani v. The State (PLD 2017 Supreme Court 165) while maintaining the sentence of fine has altered the conviction of appellant recorded under section 302(b) PPC to one under section 302(c) PPC and reduced it to 10 years R.I.

14. In view of above, this appeal is dismissed. The jail roll of the appellant dated 14.03.2017 shows that he has remained in jail substantially for the period of 15 years, 01 month and 29 days and has earned remission of 05 years, 07 months and 10 days and thus in all he has remained in jail for 20 years 09 months and 09 days and his unexpired portion of sentence with compensation / daman is 06 years, 10 months and 21 days. His conviction while relying on the case of Zeeshan @ Shani, supra, is converted from section 302(b) PPC to section 302(c) PPC and his sentence is altered and reduced to the period already undergone by him. The impugned judgment indicates that the appellant in addition to imprisonment for life has been required to pay Rs.50,000/- as compensation as required under section 544-A, Cr.P.C and in default to suffer S.I for 6 months and further he has been required to pay Rs.20,000/- as daman to injured Asif in

addition to R.I of 02 years and in default thereof to suffer to suffer S.I for 2 months.The record reflects that the appellant was arrested on 14.08.2001 and it has been more than 16 years he is in jail physically, therefore, R.I of two years awarded to the appellant under section 337-F(ii) PPC is ordered to run concurrently with the sentence already undergone by the appellant. Additionally, period of six months S.I, which the appellant was to undergo in default of compensation of Rs.50,000/- and the period of two months S.I, which the appellant was to undergo in default of daman of Rs.20,000/-,are included in the period already undergone by him. However, it is clarified that appellant's liability to pay compensation of Rs.50,000/- and daman of Rs.20,000/-shall remain intact and be recovered from him in the manner provided for recovery of arrears of land revenue as contemplated by provision of Section 544-A, Cr.P.C. The appellant shall be released forthwith if not required in any other case.These are the reasons of short order dated 24.11.2017.

Appeal is disposed of in above terms.

JUDGE