

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD**  
**Criminal Appeal No.S-275 of 2019**

**Appellant:** Zubair alias Jubbi son of Muhammad Mubeen Qureshi, Through Mian Taj Muhammad Keerio, Advocate.

**Complainant:** Through Mr. Kamran Baig, Advocate.

**State:** Mr. Siraj Ahmed Bijarani, A.P.G for the State.

**Date of hearing:** 26.03.2025

**Date of decision:** 26.03.2025

**JUDGMENT**

**Syed Fiaz ul Hassan Shah, J:** The appellant was convicted and sentenced to suffer R.I for life imprisonment vide judgment dated 27.09.2019 passed by the learned Model Criminal Trial Court/Ist Additional Sessions Judge, Hyderabad, which is impugned by the appellant before this Court by way of instant appeal.

2. After hearing at length, the learned counsel for the appellant states that he would not press the instant appeal on merits, if the conviction awarded and sentence passed against the appellant by learned trial Court is reduced to one which is already undergone by him for the reasons.

3. On the other hand, the learned counsel for complainant vehemently opposed to the suggestion so given by the learned counsel for appellant and in support of his contention he relied upon the case of *Muhammad Juman vs the State and other* (2018 SCMR 318), which is reproduced hereunder:-

*“10. As noted above, through impugned order, appellate Court while maintaining the conviction under section 302(b), P.P.C. modified the sentence to "already under gone", without application of mind and in a mechanical fashion, as noted above, either of the two legal sentence for an offence under section 302(b), P.P.C. is provided viz. "death"*

***OR "imprisonment for life" and nothing in between, shorter or greater. In case the Appellate Court, looking at the attending and mitigating circumstances was convinced that the sentence awarded is sever and or that mitigating and or other attending circumstances existed or that the case is covered by any of the legal exception or that case of the respondent fell under clause (c) to section 302, P.P.C., and also beyond the pale of proviso thereto, it was only then Court could have exercised the discretion to award any term of sentence or punishment "with imprisonment of either description for a term which may extend to twenty five years".***

4. The learned A.P.G for the State recorded her no objection if, the conviction is maintained and sentence is reduced to the one already undergone by the appellant.

5. Heard arguments and perused the record.

6. Perusal of record reflects that appellant has already been remained in jail and the major portion of sentence has been served. The counsel for the complainant relied upon the case of *Muhammad Juman* (supra), however, paragraph-10 of the said case law laid exceptions including one that "occurrence took place at the spur of moment". The counsel for complainant could not deny the fact that occurrence took place at the spur of a moment in the present case. It is also confirmed from the record that "occurrence took place at the spur of moment". I am also fortified with the case of *Muhammad Ajmal vs the State* (2022 SCMR 88) wherein it is held that:-

***"conviction under Section 302(b) PPC converted to one under Section 302(c) PPC, admittedly the parties were not inimical to each other and there was no previous ill will between the deceased and the accused. In the FIR it was specifically mentioned that during repairing the tractor of the deceased, altercation took place between the deceased and accused due to dispute of money. So at the spur of moment, suddenly altercation took place and according to prosecution's own case, there were exchange of abuses between both of them and then accused picked up a hatchet lying in the shop and gave a solitary blow to the deceased. Accused did not repeat the blow although deceased was lying at his mercy; he did not take undue advantage nor acted in a cruel or unusual manner. So all the ingredients of S.302(c), PPC were made out and present case fell within said provision and not S.302(b) PPC. Appeal was partly allowed, and conviction of accused was***

*converted from S.302(b) PPC to S.302(c), PPC and his sentence was reduced from imprisonment for life to seventeen years imprisonment”.*

7. The facts of the present case are also on same equilibrium of the case of *Muhammad Ajmal (supra)*, and the case law relied upon by the counsel for complainant.

8. *Therefore*, in view of above, the appellant can be given a chance in his life to rehabilitate himself. Consequently, the appellant deserves leniency and while taking a lenient view, I dismiss this appeal on merits; however, reduce the sentence to one already undergone by the appellant. The appellant is in jail, he shall be released forthwith, if not required in any other case/crime.

9. The instant appeal is disposed of accordingly.

**J U D G E**

*Ahmed/Pa,*