

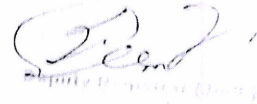
S. 302 (b) converted to
S. 302 (c)

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IN THE HIGH COURT OF SINDH AT KARACHI

Cr. Appeal No. 43 / 2020

13-10-2020



3294

Sher Ali son of Abdul Ghafoor Jokhio,
Muslim, adult, resident of villag Allah Dino Jokhio,
Taluka Mirpur Sakro,
District Thatta, Presently confined in
Central Prison,
Karachi..... Appellant

VERSUS

The State Respondent

Crime No. 124/2018
U/S 302, 114, 504 34
PPC
P.S. Gharo, District: Thatta.

CRIMINAL APPEAL UNDER SECTION 410 CR.P.C

Being aggrieved by and dissatisfied with the impugned Judgment dated: 15.09.2020 passed by Additional Sessions Judge-1/Model Criminal Trial Court, Thatta in Session Case No. 40/2018, whereby the appellant was awarded conviction for life imprisonment along with compensation of Rs.100,000/- to be paid to the legal heirs of the deceased, the appellant preferred this appeal and it is prayed on behalf of the appellant that this Hon'ble Court may graciously be pleased to call for R&P of the above case and after hearing the captioned appeal set-aside the Judgment dated: 15.09.2020 and acquit the appellant above named, on consideration of the following facts and grounds amongst others.

IN THE HIGH COURT OF SINDH AT KARACHI

PRESENT:

Mr. Justice Mohammad Karim Khan Agha

CRIMINAL APPEAL NO.431 OF 2020

Appellant: Sher Ali s/o Abdul Ghafoor Jokhio,
Through Mr. Zulfiqar Ali Langah, Advocate

Respondent: The State through Mr. Muhammad Iqbal
Awan, Additional Prosecutor General,
Sindh.

Date of Hearing: : 01.10.2024

Date of Judgment : 08.10.2024

JUDGMENT

Mohammad Karim Khan Agha, J. Appellant Sher Ali son of Abdul Ghafoor Jokhio, was tried in the Court of Addl. Session Judge-I / Model Criminal Trial Court, Thatta in Sessions Case No.40 of 2018 arising out of FIR No.124 of 2018 under Sections 302, 114, 504, r/w section 34 PPC registered at Police Station Gharo, district Thatta and vide Judgment dated 15.09.2020 he was convicted and sentenced under section 302(b), PPC as Tazir and sentenced to suffer R.I for life with fine of Rs.1,00,000/- (Rupees One Lac). In case of default in payment of fine he shall suffer SI for (06) six months more. However, he was also given the benefit of Section 382-B Cr.P.C.

2. The brief facts of the case are that on 23.10.2018 at 1330 hours at the cabin of complainant located near puncture fixing shop of Khair Muhammad Jokhio, Gujjo Town, on Thatta-Karachi National Highway, Taluka Mirpur Sakro, District Thatta, accused Sher Ali son of Abdul Ghafoor Jokhio, Naseer Ahmed son of Abdul Ghafoor Jokhio and accused Wali Muhammad alias Walo son of Ladho Jokhio alongwith co-accused Nazeer (declared lunatic), duly armed with pistol, hatchet, belcho (spade) and iron rod in furtherance of

their common intention attacked complainant party due to dispute over crop damaging, used abusive language and on instigation of accused Naseer Jokhio, accused Sher Ali, Wali Muhammad and Nazeer caused spade, iron rod and hatched injuries to deceased Saddam and caused his death. Hence, this FIR was lodged.

3. After usual investigation the matter was challaned and the appellant was sent up to face trial. He plead not guilty and claimed trial.

4. In order to prove its case, the prosecution examined nine (09) PWs and exhibited various items and other documents. The appellant recorded his statement under Section 342 Cr.P.C. wherein he claimed that he is innocent. He did not give evidence on oath or call any witness in support of his defence.

5. After appreciating the evidence on record, the learned trial court convicted and sentenced the appellant as set out earlier and hence, the appellant has filed this appeal against his conviction and sentence.

6. At the very outset learned counsel for the appellant submitted that this case does not fall within the purview of Section 302(b) of PPC and in fact it was a case which falls within the purview of Section 302(c) PPC as the applicant had murdered the deceased on account of sudden provocation and as such he only pressed his appeal to this extent. Namely, that his conviction be converted to one under S.302 (c) PPC. When confronted with this contention of learned counsel for the appellant, by reading the evidence on record, learned APG conceded that the case did not fall within the purview of Section 302(b) PPC but rather section 302(c) PPC and that based on the evidence on record the conviction of the appellant should be converted from one under S.302 (b) PPC to one under S.302 (c) PPC.

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7. I have gone through the evidence on record, including the medical evidence, which clearly establishes that the deceased was murdered by a sharp instrument which the eye witness's state was a hatchet. The prosecution eye witnesses' evidence suggests that there was a sudden fight between the parties, over damage to crop and during this sudden quarrel the appellant used the hatchet to hit the head of the deceased one time which led to his death. The evidence therefore indicates that this is not a case of premeditated murder but rather a case of sudden quarrel/flare up between the parties and on account of sudden provocation in the heat of the moment the appellant hit the deceased over the head one time with a hatchet which lead to his death which attracts the offence of S.302 (c) PPC and not S.302 (b) PPC.

8. Accordingly the conviction of the appellant is converted into one under section 302(c) PPC and he is sentenced to the time which he has already served in jail and shall be released unless he is wanted in any other custody case.

9. The appeal is disposed of in the above terms.