

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT,
MIRPURKHAS**

**Criminal Jail Appeal No.S-37 of 2024
Old Criminal Jail Appeal No.S-152 of 2019.**

Appellant : Muhammad Ashraf s/o Jado Khan Panhwar
Through Mr. Roshan Ali Mallah advocate

The State : Through Mr. Shahzado Saleem,
Additional P.G

Date of hearing : 08-10-2025.

Date of decision : 08-10-2025

J U D G M E N T

Amjad Ali Sahito, J:- This judgment shall decide the fate of the captioned Jail Appeal preferred by appellant Muhammad Ashraf s/o Jado Khan Panhwar through Senior Superintendent Central Prison, Hyderabad, impugning the judgment dated 28-05-2019, passed by learned Additional Sessions Judge-I/MCTC, Mirpurkhas, in Sessions Case No.81/ 2012 (Re. St.Vs. Muhammad Sharif and others), vide FIR Crime No.01/2012, registered for offence punishable under Sections 302, 324, 337-A(i),114,34 PPC at Police Station Mehmoodabad, whereby co-accused Muhammad Sharif and Nazeer were acquitted while appellant was convicted and sentenced as under:-

- 1). “For the offence punishable under section-302(b) PPC to under-go Life Imprisonment as Tazir and to pay Rs.1,00,000/- as compensation to the legal heirs of the deceased Mst. Shabana u/s 544-(a) Cr.P.C and in case of default of payment, he shall suffer S.I for the period of Six(06) months more.”
- 2). “For the offence punishable under section-337-A(i) PPC to suffer R.I for One(01) year as Tazir and to pay Rs.50,000/- as daman to P.W/injured Sajid Ali alias Chuno.”
- 3). “For the offence punishable under section-337-L(ii) PPC to suffer R.I for Six (06) months as Tazir and to pay Rs.50,000/- as daman to P.W/injured baby Rozeena.”

However, benefit of section 382-B Cr.P.C was extended to the appellant and all the above sentences shall run concurrently.

2. The brief facts of the prosecution case as per FIR lodged by complainant Ali Muhammad on 01-3-2012 at 1800 hours at Police Station Mehmoodabad, Mirpurkhas are that his sister namely Mst. Shabana was married with Ashraf Panhwar about 06 years back, out of the wedlock there are three daughters and one son and out of them daughter Rozeena is younger than others aged about 1½ years. On 01-3-2012 complainant Ali Muhammad, his uncle Muhammad Ali and younger brother Sajid Ali alias Chuno went to see his sister Mst. Shabana in Chinchi and they were present in front of the house of his sister Mst. Shabana, meanwhile at about 1400 hours Ashraf Panhwar, Sharif, Nazeer and Gulsher came, to whom his sister Mst. Shabana said that not to commit theft and provide her "*Halal*" earning, on which Sharif, Nazeer and Gulsher asked Ashraf Panhwar that she always restrained them from committing theft, so she should be killed, upon which Ashraf picked a hatchet lying in the house and inflicted straight blow of hatchet on the head of complainant's sister Mst. Shabana with intention to kill. The complainant, Muhammad Ali and Sajid alias Chuno intervened, then Ashraf also inflicted hatchet blow on the head of complainant's brother Sajid Ali alias Chuno and on younger daughter Mst. Rozeena with intention to kill them. The complainant party then raised cries, on which Ashraf Panhwar threw hatchet and escaped away with his brothers. Thereafter, complainant noticed that his sister Mst. Shabana sustained injury on her head and blood was oozing and she was un-conscious. The complainant party then brought injured persons namely Mst. Shabana, Sajid Ali alias Chuno and baby Rozeena at Civil Hospital Mirpurkhas, where doctor testified the death of Mst. Shabana. The complainant informed his relatives, who reached at the hospital and police also arrived there and then after completion of all legal formalities as well as after postmortem the dead body was handed over to the complainant for burial purpose and then complainant appeared at Police Station and lodged the FIR.

3. After completion of usual investigation, the I.O submitted a police report under section 173 Cr.P.C before the trial court, showing appellant and acquitted accused Muhammad Sharif and

Nazeer in custody. After supplying copies of necessary documents to them, charge was framed, to which they pleaded not guilty and claimed trial.

4. At trial, the prosecution to prove its case, examined in all nine (09) witnesses, who produced numerous documents and then learned Prosecutor closed the prosecution side by filing statement. Thereafter, statement of the appellant/ accused and acquitted accused under section 342 Cr.P.C were recorded wherein they denied the allegations being false and claimed their innocence. However, accused neither examined themselves on oath as required under section 340(2) Cr.P.C nor led evidence in their defence. After hearing learned counsel for both parties, learned trial Court convicted the appellant while acquitted co-accused Muhammad Sharif and Nazeer through impugned judgment, hence this Criminal Jail Appeal.

5. Record shows that on last date of hearing viz 23-09-2025 none present for the appellant; however Jail Roll of the appellant was called from the concerned Jail Superintendent. Today, too none present for the appellant, however in compliance of Court order, Superintendent Central Prison, Mirpurkhas, submitted Jail roll of the appellant vide letter dated 07-10-2025, which shows that appellant has served out 13 years and 05 days without remission and has earned remission of 11 years and 24 days and now there remains only 11 months and 01 day. Hence the appellant served out total sentence more than 24 years, has served out major portion of his sentence and learnt the lesson as he has undergone for his sentence. Further learned A.P.G, looking to such situation, has raised his no objection for conversion of the sentence of the appellant from section 302(b) PPC to section 302(c) PPC and reduction of sentence as one of already undergone.

6. After thoroughly examining the evidence available on record, it reflects that as per prosecution case complainant Ali Muhammad, P.W Muhammad Ali and P.W/injured Sajid Ali alias Chuno are the eye witnesses of alleged incident, they in their evidence have deposed that on 01-03-2012 they went to the house

of appellant Muhammad Ashraf to see their sister deceased Mst. Shabana w/o appellant Muhammad Ashraf. In the meantime brothers of appellant namely Sharif, Nazeer and Gulsher came there and she (deceased) advised them to leave the habit of theft and to earn the livelihood in fair manner, whereupon they became annoyed and asked their brother/ appellant to commit her murder, whereupon appellant caused hatchet blow on the head of his wife Mst. Shabana and when P.W Sajid alias Chuno tried to rescue his sister Mst. Shabana, appellant also caused hatchet injury on his head; appellant also caused hatchet injury to his minor daughter Rozeena. The injured were taken to Civil Hospital, Mirpurkhas, where deceased Mst. Shabana succumbed to the injury.

7. The evidence of eye witnesses thus indicates that the incident occurred on the spur of moment, without any prior planning or premeditation. There is no evidence indicating that the murder of deceased Mst. Shabana was pre-planned. Consequent, I am of the considered view that the appellant did not have the intention to commit *qatl-i-amd* as contemplated under section 300(a) Pakistan Penal Code. Therefore, the conviction and sentence awarded under section 302 (b) PPC, are not sustainable and case of the appellant properly falls within the ambit of section 302 (c) PPC. In this regard, I am fortified with the cases of *Amjad Shah v. The State* [PLD 2017 Supreme Court 152], *Zeeshan @ Shani v. The State* [PLD 2017 Supreme Court 165], *Azmat Ullah v. The State* [2014 SCMR 1178].

8. In the case of *Zeeshan @ Shani [supra]*, the Honorable Supreme Court has held 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 in default thereof. The benefit under section 382-B of the Cr.P.C. shall be extended to the appellant.

In another case of *Azmat Ullah [supra]*, the Honorable Supreme Court has held that:

4. ... A bare perusal of the F.I.R., the statements made by the eyewitnesses before the learned trial Court and the findings recorded by the learned courts below clearly shows that there was no background of any ill-will or bitterness between the appellant and his deceased brother and that the incident in issue had erupted all of a sudden without any premeditation whatsoever. The medical evidence shows that the deceased had received one blow of a *chhurri* on his chest whereas another blow was received by him on the outer aspect of his left upper arm. The doctor conducting the post-mortem of the dead body had categorically observed that both the injuries found on the dead body of the deceased could be a result of one blow of *chhurri*. These factors of the case squarely attract Exception 4 contained in the erstwhile provisions of section 300, P.P.C. It has already been held by this Court in the case of *Ali Muhammad v. Ali Muhammad* and another (PLD 1996 SC 274) that the cases falling in the exceptions contained in the erstwhile provisions of section 300, P.P.C. now, attract the provisions of section 302(c), P.P.C. The case in hand was surely a case of lack of premeditation, the incident was one of a sudden fight which was a result of heat of passion developed upon a sudden quarrel and no undue advantage had been taken by the appellant nor had he acted in a brutal or unusual manner. In these circumstances Exception 4 contained in the erstwhile section 300, P.P.C. squarely stood attracted to the case in hand and, thus, the case against the appellant fell within the purview of the provisions of section 302(c), P.P.C.

5. Keeping in view the facts and circumstances of the case this appeal is partly allowed, the conviction of the appellant for an offence under section 302(b), P.P.C. is converted into that for an offence under section 302(c) P.P.C. and consequently his sentence is reduced from rigorous imprisonment for twenty five years to rigorous imprisonment for ten years. The sentence of fine passed against the appellant by the learned trial court and upheld by the Lahore High Court, Lahore has been found by us to be unwarranted because section 302 (b) or 302 (c), P.P.C. do not contemplate any such sentence. Instead of fine we direct that the appellant shall pay a sum of Rs. 50,000 to the heirs of the deceased by way of compensation under section 544-A, Cr.P.C. or in default of payment thereof he shall undergo simple imprisonment for six months. The benefit under section 382-B, Cr.P.C. shall be extended to him. This appeal is disposed of in these terms.

9. For what has been discussed above, instant Criminal Jail Appeal is **dismissed**; however, conviction and sentence awarded through impugned judgment dated 28-05-2019 by the learned trial court to the appellant for an offence under section 302(b) PPC in FIR No. 01/ 2012 of PS Mehmoodabad is converted into that for an offence under section 302(c) PPC and consequently, appellant's sentence is converted from life imprisonment to imprisonment for twenty three (23) years including compensation and all sentences, awarded to the appellant, are directed to run concurrently. However, *daman* amount of Rs.50,000/= each was ordered to be paid to injured PWs Sajid Ali alias Chuno and baby Rozeena, in case of failure whereof, the appellant shall suffer S.I for three (03) months more. Since the appellant has completed his sentence, therefore, Jail Superintendent concerned is directed to release him forthwith if not required in any other case/crime. **Consequently, instant Criminal Jail Appeal stands disposed of with the above modification.**

JUDGE