

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

Criminal Appeal No.S-18 of 2024

Appellant : Leemon s/o Allah Warayo Khaskheli
Through Mr. Aziz Ahmed Laghari, advocate

The State : Through Mr. Ghulam Abbas Dalwani,
Deputy P.G

Criminal Revision Application No.S-15 of 2024

Applicant : Leemon s/o Allah Warayo Khaskheli
Through Mr. Aziz Ahmed Laghari, advocate

The State : Through Mr. Ghulam Abbas Dalwani,
Deputy P.G

Date of hearing : 18-09-2025

Date of decision : 18-09-2025

JUDGMENT

Amjad Ali Sahito, J; By this single judgment, I shall decide the fate of the captioned Criminal Appeal preferred by appellant Leemon s/o Allah Warayo Khaskheli, whereby he has impugned the judgment dated 19-02-2018 passed by learned Additional Sessions Judge-II, Mirpurkhas, in Sessions Case No.31/ 2013 (Re. *St.Vs. Leemon and others*, vide FIR Crime No.37/2012, registered for offence punishable under Sections 302, 114 and 34 PPC at Police Station Khan, whereby he, for having committed the murder of complainant's son Abdul Rasheed, was sentenced to suffer imprisonment for life under Section 302(b) PPC, with compensation of Rs.50,000/=, to be paid to the legal heirs of the deceased, and in default thereof, to suffer S.I for six months more. However, benefit of section 382-B Cr.P.C was extended to the appellant; whereas co-accused Shah Muhammad alias Shahoo s/o Allah Warayo Khaskheli and Mustafa s/o Allah Warayo Khaskheli were convicted u/s 114 PPC r/w section 302 PPC and sentenced to suffer R.I for 10 years and to pay Rs.50,000/= each as compensation to the legal heirs of the deceased; in case of default thereof, they shall have to undergo S.I for six months more. Through Criminal Revision Application No.15/ 2024 the

appellant/ applicant has impugned the judgment dated 19-02-2018, passed by learned Additional Sessions Judge-II, Mirpurkhas, in Criminal Appeal No. 01/ 2016 (Re. *Leemon vs. The State*), whereby he maintained the sentence of S.I for three years and to pay fine of Rs.5000/=, in case of default to pay fine, to suffer S.I for 15 days more awarded to the appellant/ applicant under section 13(e) Arms Ordinance in Criminal Case No.87/ 2013 arising out of FIR No. 38/ 2012 of PS Khan by the trial court. However, benefit of section 382-B Cr.P.C was extended to the appellant/ applicant.

2. Brief facts of the prosecution case as per FIR No. 37/ 2012 lodged by complainant Bilawal s/o Haji Muhammad Ali Khaskheli on 07-10-2012 at 2130 hours at PS Khan are that marriage of his son Abdul Rasheed was solemnized with daughter of Leemon Khaskheli; however, due to domestic issues Leemon got *Talaq* of his daughter from Abdul Rasheed and then contracted second marriage of his daughter. Due to which they had annoyed with complainant party. On 06-10-2012 at 1030 hours, complainant alongwith his son Abdul Rasheed, Nazar Muhammad s/o Zangi Khaskheli and his brother-in-law Lal Bux s/o Muhammad Bachal Khaskheli were standing in front of Maro Meghwar Medical Store, Muhammad Hassan Mari, where they saw accused Leemon Khaskheli, Mustufa Khaskheli and Shah Muhammad alias Shaho armed with pistols and on their instigation Leemon Khaskheli made straight fire shots with pistol with intention to kill, which hit to son of complainant namely Abdul Rasheed, who fell down on the ground. On this, they raised cries and people of Muhammad Hassan Mari gathered there while accused persons escaped away with weapons. Then they arranged the vehicle and departed with his injured son towards Civil Hospital Mirpurkhas, but his son Abdul Rasheed succumbed to the injuries in the way. Then police of PS Khan reached at Civil Hospital, Mirpurkhas, and after all legal formalities police got conducted post mortem of deceased and handed over the dead body of Abdul Rasheed, which was taken to village and after funeral ceremony complainant came at PS and lodged instant FIR.

3. Brief facts of the prosecution case as per FIR No. 38/ 2012 lodged by complainant ASI Wazeer Husain on 21-10-2012 at 1300 hours at PS Khan are that he started interrogation vide entry No.04 at 1030 hours from the arrested accused Leemon s/o Allah Warayo in Crime No.37/ 2012 u/s 302, 114 PPC, wherein accused admitted his guilt and became ready to produce crime weapon. Whereupon complainant alongwith arrested accused, PC Sultan Ahmed and PC Deda Ram left PS vide entry No.06 at 1105 hours in government vehicle driven by DPC Shoukat Ali. At about 1200 hours they reached at the pointed place which is sugar cane crop near village Muhammad Hassan Mari Deh 90 Taluka Hussain Bux Mari. Accused got stopped the vehicle and then after digging earth by the side of bank of water course, he took out a black coloured plastic shopper, containing one 30 bore pistol alongwith magazine containing three live bullets and handed over the same to the complainant in presence of private mashirs Allah Jurio and Ali Bux Khaskheli. On inquiry about licence, accused disclosed that same is unlicensed. Then case property was sealed at the spot in presence of mashirs and such memo was prepared. Then they brought the accused alongwith recovered property at PS where complainant lodged instant FIR.

4. After completion of the usual investigation, the I.O submitted police report(s) under section 173 Cr.P.C before the trial court(s), showing the appellant/ applicant in judicial custody. After supplying copies of necessary documents charge(s) was framed against the appellant/ applicant, to which he pleaded not guilty and claimed trial.

5. At trial, the prosecution to prove its' case, examined in all seven (07) witnesses in main case bearing Crime No. 37/ 2012 while examined 02 witnesses in off shoot case bearing Crime No. 38/ 2012, who produced numerous documents and then learned Prosecutor closed the prosecution side by filing such statement(s). Thereafter, statements of the appellant/ accused and co-accused under section 342 Cr.P.C were recorded (statement of the appellant/ accused under section 342 Cr.P.C was also recorded in off shoot case) wherein they/he denied the allegations being false and claimed their/his innocence. However,

they/he did not examine on oath as required u/s 340(2) Cr.P.C nor lead evidence in defence. After hearing learned counsel for both parties, learned trial Court convicted the appellant and co-accused in main crime through impugned judgment, and so also appellant/ applicant was also convicted by the learned trial court in off shoot case of section 13(e) Arms Ordinance; said conviction was maintained by the learned lower appellate court in Criminal Appeal No.01/ 2016 through impugned judgment; hence these Criminal Appeal and Criminal Revision Application .

6. After filling the instant appeal the notices were issued to the complainant through SHO concerned. On 03.02.2025 SHO PS Khan appeared and ensure that he will serve the notice upon the legal heirs of the deceased but the legal heirs of the deceased called absent hence the matter was proceeded.

7. Learned counsel for the appellant submitted that the learned lower court failed to pass order that both the sentences shall run concurrently, therefore, he prayed that both the sentences awarded to the appellant/ applicant in above cases may be run concurrently on the ground that initially appellant/ applicant was booked in murder case and such FIR bearing Crime No. 37/ 2012 was registered at PS Khan and during investigation, crime weapon/ arms and ammunition was recovered on the pointation of the appellant/ applicant; hence separate FIR bearing Crime No.38/ 2012 under Arms Ordinance was registered. He further submitted that alleged incident took place on the spur of moment and there was no pre-meditation on the part of the appellant, therefore, he prayed that sentence awarded to the appellant under section 302(b) PPC may be converted under section 302(c) PPC. Learned counsel then very outset submits that he is not pressing instant Criminal Appeal and Criminal Revision Application on merits but would be satisfied if the sentence awarded to the appellant/ applicant was reduced to the time he had already remained in prison and both the sentences are ordered to run concurrently.

8. Learned Deputy P.G raised 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 and if both the sentences awarded to the appellant/ applicant run concurrently.

09. I have heard the learned counsel for the respective parties and have gone through the evidence as well as record with their able assistance.

10. After a thorough evaluation of the evidence adduced by the complainant and the eyewitnesses, it emerges that the occurrence stems from a matrimonial dispute between the parties. The deceased, Abdul Rasheed, had contracted marriage with the daughter of the appellant/accused, Leemon; however, the said marriage was subsequently dissolved through divorce, resulting in strained relations between the parties. Owing to this discord, the accused Leemon is alleged to have committed the murder of Abdul Rasheed. During cross-examination, the complainant admitted that a *faisla* (settlement) meeting was convened before one Amjad Shah concerning the dissolution of the marriage of the accused's daughter, and further conceded that a penalty of Rs. 200,000 was imposed upon him during such *faisla*.

11. It is an admitted position that the FIR was lodged with a delay of approximately one day, for which no plausible explanation has been offered by the complainant. Moreover, the testimonies of the eyewitnesses suffer from material contradictions. They differ inter se regarding the number of shots allegedly fired upon the deceased by the appellant. In the FIR, the complainant stated that the appellant fired at his son; however, during his deposition, he claimed that the first shot hit the deceased on the right arm and the second on the chest. Conversely, eyewitness Nazar Muhammad deposed that the accused fired three shots at the deceased, whereas PW-4/eyewitness Lal Muhammad testified that the accused Leemon fired directly at Abdul Rasheed with his pistol, causing the fatal injury.

12. The cumulative effect of the ocular evidence indicates that the incident took place suddenly, at the spur of the moment, and

on the instigation of a co-accused, without prior deliberation or premeditation. The material on record reflects that the appellant was deeply aggrieved over the divorce of his daughter. Multiple *faisla* meetings were convened, penalties were imposed upon the complainant's side, and the dispute remained unresolved. The occurrence, therefore, appears to have transpired under grave and sudden provocation. There is no evidence to establish that the murder of Abdul Rasheed was pre-planned.

13. In view of the foregoing circumstances, I am of the considered opinion that the appellant did not possess the requisite mens rea to commit *qatl-i-amd* as defined under Section 300(a), Pakistan Penal Code. Consequently, the conviction and sentence recorded under Section 302(b), P.P.C., are not sustainable. The case of the appellant properly falls within the purview of Section 302(c), P.P.C. In arriving at this conclusion, reliance is placed upon the judgments rendered in *Amjad Shah v. The State* [PLD 2017 SC 152], *Zeeshan @ Shani v. The State* [PLD 2017 SC 165], and *Azmat Ullah v. The State* [2014 SCMR 1178].

14. 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.

15. During pendency of instant appeal, Jail Roll of the appellant/ applicant was called from the concerned Jail Superintendent, who sent the same vide letter dated 06-08-2025, which shows that appellant has served out 12 years, 09 months and 20 days without remission and has earned remission of 10 years, 08 months and 02 days, hence he remained in a jail about 23 years. The appellant/accused has served out major portion of his sentence and learnt the lesson as he has undergone for his sentence. Further learned counsel for appellant/ applicant submits that he is not pressing instant Criminal Appeal and Criminal Revision Application on merits but would be satisfied if the sentence given to the appellant in main crime was reduced to the time he had already remained in prison and both the sentences, awarded to the appellant/applicant in main case and off shoot case, are ordered to run concurrently. Learned D.P.G has also raised his no objection on such proposal.

16. For what has been discussed above, instant Criminal Appeal was **dismissed** vide short order dated 18.09.2025; however, the conviction and sentence awarded through impugned judgment dated 19-02-2018 by the learned trial court to the appellant under section 302(b) PPC in FIR No. 37/ 2012 of PS Khan was converted into that for an offence under section 302(c) PPC and consequently, appellant's sentence was converted from life imprisonment to imprisonment for twenty (20) years. However, compensation amount of Rs.50,000/= was ordered to be paid to the legal heirs of the deceased as provided under section 544-A Cr.P.C, in case of failure whereof, the appellant shall suffer S.I for six months more. However, benefit of section 382-B Cr.P.C was extended to the appellant.

17. The Criminal Revision Application No.S-15/ 2024 filed against the conviction and sentence awarded through judgment dated 14-01-2016 by learned trial court to the appellant/

applicant under section 13(e) Arms Ordinance in Criminal Case No.87/ 2013 arising out of FIR No. 38/ 2012 of PS Khan, which was maintained by the learned lower appellate court vide impugned judgment dated 19-02-2018 passed in Criminal Appeal No.01/ 2016 was also **dismissed**. However, it was made clear that both sentences awarded by the learned trial courts in Sessions Case No.31/ 2013 for offence under sections 302, 114, 34 PPC and in Criminal Case No.87/ 2013 for an offence under section 13(e) of Arms Ordinance, which was maintained by learned lower appellate Court vide judgment dated 19-02-2018, shall run concurrently. The impugned judgments of conviction and sentence passed by the learned courts below are modified accordingly. The benefit of section 382-B Cr.P.C was extended to the appellant/applicant. Since the appellant/ applicant has completed his sentence, therefore, concerned Jail Superintendent was directed to release him forthwith if not required in any other case/crime. **Consequently, Criminal Appeal No.S-18 of 2024 and Criminal Revision Application No.S-15 of 2024 stand disposed of with the above modification.** These are the reasons of short order dated **18.09.2025**.

JUDGE

“Saleem”