

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

**Criminal Jail Appeal No.S-15 of 2024
Old Criminal Jail Appeal No.S-83 of 2018.**

Appellant : Khushi Muhammad s/o Muhammad Usman Khaskheli
Through Mr. Mumtaz Ali Jarwar advocate

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

Date of hearing : 18-09-2025.

Date of decision : 18-09-2025

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 Khushi Muhammad s/o Muhammad Usman Khaskheli through Senior Superintendent Central Prison, Hyderabad, impugning the judgment dated 05-03-2018, passed by learned Additional Sessions Judge-II, Mirpurkhas, in Sessions Case No.239/ 2014 (Re. St.Vs.Khushi Muhammad), vide FIR Crime No.69/2014, registered for offence punishable under Sections 302 PPC at Police Station Kot Ghulam Muhammad, whereby he, for having committed the murder of complainant's wife Mst. Budhi, 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.

2. The brief facts of the prosecution case as per FIR lodged by complainant Mir Muhammad Khaskheli at Police Station Kot Ghulam Muhammad on 06-07-2014 at 1500 hours are that his brother Khushi Muhammad demanded *Rishta* of his daughter few days ago, for which he and his wife Mst. Budhi asked Khushi Muhammad that his son is loafer type person, therefore, they will not give *Rishta* of their daughter; due to which Khushi Muhammad became annoyed. On 04-07-2014, his nephew Habibullah and uncle Muhammad Qasim were present in the

house and his wife Mst. Budhi was also present in the courtyard when at about 1745 hours his brother Khushi Muhammad brought hatchet from his house and told his wife that why she refused for *Rishta* of her daughter for his son, whereupon she refused for giving *Rishta*, due to which accused became annoyed and caused hatchet blows upon the neck and other parts of his wife Mst. Budhi with intention to commit her murder. They raised *hakkals* and when reached near, his brother Khushi Muhammad fled away alongwith hatchet. They saw that his wife Mst. Budhi succumbed to the injuries. Then they informed police about the incident, whereupon police arrived there. After post mortem and burial proceedings, complainant came at PS and lodged instant 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 in custody. After supplying copies of necessary documents to the appellant, charge was framed against him, to which he pleaded not guilty and claimed trial.

4. At trial, the prosecution to prove its' case, examined in all six (06) witnesses, who produced numerous documents and then learned Prosecutor closed the prosecution side by filing statement. Thereafter, statement of the appellant/ accused under section 342 Cr.P.C was recorded wherein he denied the allegations being false and claimed his innocence. However, accused neither examined himself on oath as required under section 340(2) Cr.P.C nor led evidence in his defence. After hearing learned counsel for both parties, learned trial Court convicted the appellant through impugned judgment, hence this Criminal Jail Appeal.

5. It is pertinent to mention here that due to absence of learned counsel for the appellant, P.O of the appellant was issued and in pursuance thereof he is produced in custody and he submitted that he remained in jail for sufficient time and learnt the lesson and prayed for his acquittal.

6. Learned Deputy P.G looking to the above position, 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.

7. After thoroughly examining the evidence available on record, it reflects that thought as per prosecution case complainant Mir Muhammad, P.Ws Muhammad Qasim and Habibullah are the eye witnesses of alleged incident, but during trial they all unanimously deposed that they had not seen the alleged incident with their eyes; however, they deposed that the appellant/accused has committed the murder of deceased Mst. Budhi due to matrimonial dispute. In FIR it is mentioned that “accused asked deceased that why she is not giving *Rishta* of her daughter to his son, whereupon deceased Mst. Budhi refused, on which accused became annoyed and caused hatchet blows to Mst. Budhi, due to which she died at the spot”.

8. 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. Budhi 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].

9. 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.

10. During pendency of instant Jail Appeal, Jail Roll of the appellant was called from the concerned Jail Superintendent, who sent the same vide letter dated 08-09-2025, which shows that appellant has served out 11 years, 02 months and 03 days without remission and has earned remission of 10 years and 06 months and now there remains only 03 years, 09 months and 27 days. Hence the appellant has served out major portion of his sentence and learnt the lesson as he has undergone for his sentence. Further learned A.P.G has also 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.

11. For what has been discussed above, instant Criminal Jail Appeal is **dismissed**; however, conviction and sentence awarded through impugned judgment dated 05-03-2018 by the learned trial court to the appellant for an offence under section 302(b) PPC in FIR No. 69/ 2014 of PS Kot Ghulam Muhammad 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 (20) years. However, compensation amount of Rs.50,000/= is 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 (06) months more. Since the appellant has completed his sentence, therefore, the appellant, who is produced in custody, is sent back to Jail with direction to the Jail Superintendent concerned to release him forthwith if not required in any other case/crime. **Consequently, instant Criminal Jail Appeal stands disposed of with the above modification.** The reasons for my short order dated **18.09.2025** are set forth herein.

JUDGE

“Saleem”