

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

**Criminal Jail Appeal No.S-09 of 2024
Old Criminal Jail Appeal No.S-240 of 2017.**

Appellant : Allah Bux s/o Jumoon Lund
Through Mr. Ali Raza Laghari advocate

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

Date of hearing : 30-09-2025.

Date of decision : 30-09-2025

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 Allah Bux s/o Jumoon Lund through Senior Superintendent Central Prison, Hyderabad, impugning the judgment dated 25-08-2017, passed by learned Sessions Judge, Tharparkar @ Mithi, in Sessions Case No.71/ 2014 (Re. St.Vs.Allah Bux), vide FIR Crime No.68/2014, registered for offence punishable under Section 302 PPC at Police Station Diplo, whereby he, for having committed the murder of complainant's brother Atta Muhammad, was sentenced to suffer imprisonment for life under Section 302(b) PPC, with compensation of Rs.200,000/=, to be paid to the legal heirs of the deceased as provided under section 544-A Cr.P.C. 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 Niaz Muhammad at Police Station Diplo on 21-07-2014 at 0500 hours are that he has two brothers namely Atta Muhammad and Abdul Ghafoor. He along with his brother Abdul Ghafoor resides in the same house while his brother Atta Muhammad resides separately. About 8/9 days ago from the date of incident, a dispute over 'Brotherly' matters arose between his deceased brother Atta Muhammad and Allah Bux s/o Jumoon (appellant/accused) due to which his deceased brother had stopped Allah Bux from visiting his house. On 17.7.2014 at about 7-00 p.m he was present in the house of Faqir Muhammad along with Muhammad Alam where they heard hue and cry from the

house of brother Atta Muhammad. Upon which he along with Faqir Muhammad and Muhammad Alam went there and saw that Allah Bux s/o Jumoon having hatchet in his hand was abusing to his brother Atta Muhammad. They restrained Allah Bux from abusing due to which he became annoyed and inflicted back side hatchet blow on the head of Atta Muhammad, who fell down and became unconscious. Thereafter, appellant/ accused Allah Bux went away towards his house. Due to serious condition of his brother Atta Muhammad, they immediately brought him at private hospital namely Qaid-e-Azam Emergency Medical Centre, Hyderabad where he succumbed to the injury. After completing formalities he brought the dead body of his brother Atta Muhammad at police station Diplo in ambulance, where he lodged instant F.I.R.

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 seven (07) 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. Learned counsel for the appellant has contended that alleged incident took place on the spur of the 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

appeal on merit but would be satisfied if the sentence awarded to the appellant was reduced to the time he had already remained in prison. **Complainant Niaz Muhammad (having CNIC No.44302-7786314-3) is also present in Court; he stated that alleged incident took place on the spur of moment due to sudden fight and he has no objection if the appellant is acquitted.**

6. Learned Additional 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.

7. After thoroughly examining the evidence available on record, it reflects that as per prosecution case complainant Niaz Muhammad, Faqeer Muhammad and Muhammad Alam are the eye witnesses of the alleged incident; out of them prosecution examined complainant Niaz Muhammad and Faqeer Muhammad during trial, who in their evidence have deposed that on 17-07-2014 at 7.00 p.m, after hearing hue and cry which were coming from the house of deceased Atta Muhammad, they went there and saw that appellant/accused was abusing their brother Atta Muhammad and when they restrained him from abusing, appellant became annoyed and caused back side of hatchet blow on the head of Atta Muhammad and then fled away; injured was taken to a private hospital at Hyderabad where he succumbed to the injury.

8. The evidence of eye witnesses thus indicates that the incident occurred on the spur of moment, without any prior planning or premeditation because when they restrained the appellant/accused from abusing he became annoyed and caused back side of hatchet blow at the head of deceased Atta Muhammad. There is no evidence indicating that the murder of deceased Atta Muhammad was pre-planned. The complainant has also appeared before this Court and stated that alleged incident took place on the spur of moment due to sudden fight and he has no objection if the appellant is acquitted. 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 22-09-2025, which shows that appellant has served out 11 years, 02 months and 02 days without remission and has earned remission of 10 years, 06 months and 15 days. The appellant confined in jail including remission more than 21 years. Hence the appellant has served out major portion of his sentence and learnt the lesson as he has

undergone for his sentence. Further the complainant Niaz Muhammad has recorded his no objection for acquittal of the appellant and 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 25-08-2017 by the learned trial court to the appellant for an offence under section 302(b) PPC in FIR No. 68/ 2014 of PS Diplo 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.200,000/= 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.**

JUDGE

"Saleem"