

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI

Criminal Appeal No.132 of 2019
Conf. Case No.02 of 2019

Date	Order with signature of Judge
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Present: Mr. Justice Nazar Akbar
Mr. Justice Zulfiqar Ahmad Khan

Rahim Khan @Bago Vs. The State

11.12.2020

M/s. Muhammad Ashraf Kazi and Irshad Jatoi, Advocates for the appellant.

Mr. Shamsheer Abbas, Advocate for the complainant.

Mr. Muhammad Iqbal Awan, Deputy Prosecutor General.

NAZAR AKBAR, J.- This Criminal Appeal is directed against the judgment dated **26.02.2019**, whereby the learned Additional Sessions Judge, Sujawal, in Sessions Case No.21/2015 arising out of FIR No.84/2014 under Section 302, 504 PPC, registered at P.S Mirpur Bathoro, has convicted the appellant under section 265-H(ii) Cr.P.C for the offence under Section 302(b) PPC and sentenced to death and fine of Rs.1,00,000/- to be paid to the legal heirs of the deceased, in default thereof, to suffer S.I for four months.

2. Heard learned counsel for the parties and perused the record. To be precise, the appellant/accused has been awarded death sentence for an offence of giving one *danda* blow on the head of victim Shah Muhammad @ Shado Jatoi resulting in his death in hospital after seven days. According to contents of the FIR, victim Shado was landlord and the appellant was working on his lands as *Hari*. There has been dispute about some payments between the victim and the appellant. However, on the date of incident the appellant by chance met the victim at a market place in the locality.

There the appellant again asked him for money due and payable by the victim to which the victim gave an excuse that their accounts have not been properly maintained. On his excuse the appellant got infuriated and suddenly hit one *danda* blow to the victim in the presence of witnesses. It is also argued by the counsel that there is 14 days delay in registration of FIR. Learned counsel for the appellant has contended that in fact the cause of death of the victim was not because of *danda* blow, it was also on account of sheer negligence of doctors. According to learned counsel the doctors have operated the victim on the next day and not instantly due to non-availability of proper medical facility at the hospital.

3. Learned counsel for the prosecution has contended that admittedly appellant has caused *danda* blow in public place on extending excuse for delay in payment of dues of appellant by the victim and, therefore, intention of causing fatal injury is very clearly attributable to the appellant. The delay in FIR of injury cases is always due to final medical report about injury.

4. The contention of learned counsel that there was delay in lodging of FIR has no force in this case since it is not the case of appellant that during the intervening period any fact has been introduced to strengthen the case against the appellant. His presence at the crime scene and suddenly causing a *danda* blow on the head of the victim as narrated in the FIR could not be a result of consultation to rope the accused in the instant case. The record shows that the victim has not died instantly rather he was taken to hospital where he survived for seven days. No postmortem of the deceased was conducted, therefore, death after seven days could still have been for some other reasons as well. However, Doctor has opined that secondary reason of death was the head injury due to

danda blow on his head. The cause of death as stated by PW-03 Dr.

Moosa in his examination-in-chief is reproduced below:-

“.....Injured during course of treatment in LUMHS expired. His death certificate was issued by Registrar Admin of LUMHS Hyderabad, which I produce at Ex:6/C, it is same and correct. The cause of death of deceased Shah Muhammad alias Shadu was declared by the Doctor of LUMHS as “Due to Cardio-Respiratory failure, secondary to head injury on 07.12.2014.....”

5. In view of the admitted facts, as to presence of accused at the crime scene and causing a *danda* blow on head of victim for delay in setting account between them, we are of the considered view that the appellant has not come with intention to kill his landlord who was avoiding to clear dues of the *Hari*/appellant on one or the other pretext. It was by chance that the landlord met with the *Hari* in a public place. The place of incident is not residence of the landlord nor lands cultivated by the appellant for the victim. However, it cannot be denied that the appellant knew that an injury caused on the head even by a *danda* may result in death of the victim. Nevertheless, the appellant is guilty of causing fatal *danda* blow for which offence he has been convicted and sentenced under Section 302(B) PPC. In view of the facts and circumstances narrated above, in our view the offence committed by the appellant did not attract the provisions of **Section 302(B) PPC** we, therefore, alter the conviction from **Section 302(B) PPC** to **Section 302(C) PPC**. Reliance is placed on the case of *Fayyaz Ahmed and another vs. Muhammad Khan and others* reported in 2020 SCMR 281. Relevant para-4 of the judgment is reproduced below:-

4. The facts and circumstances of the case clearly demonstrate that the encounter between the parties was a chance and sudden encounter and there was no premeditation involved in this case. In this sudden occurrence only one blow was given by Rozi Khan appellant to Safdar Ali deceased and despite an

opportunity being available in that regard he had not repeated that blow. In the heat of passion at the spot no undue advantage had been taken by the appellants and they had not acted in any manner which could be termed as cruel or unusual. For all these reasons we have concluded that the actions attributed to the appellants attracted the provisions of section 302(c), P.P.C. With this conclusion we hold that the trial court was quite justified in convicting and sentencing Fayyaz Ahmed appellant for an offence under section 302(c), P.P.C. and the conviction and sentence of Rozi Khan appellant for an offence under section 302(b), P.P.C. were unjustified.

Therefore, while altering conviction of the appellant from **Section 302(B) PPC** to **302(C) PPC** the sentence of the appellant is modified from death to 10 years R.I. However, the sentence of fine amount and in default in payment of fine will remain the same. The appellant is also entitled to the benefit of **Section 382-B Cr.PC**. Reference for confirmation of death sentence award to appellant Rahim Khan @ Bago made by the learned trial Court is answered in "Negative".

6. The instant Criminal Appeal is dismissed with the above modifications.

JUDGE

JUDGE

Ayaz Gul