

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD.

Criminal Appeal No.S-36 of 2014

Date of hearing: 31.10.2022  
Date of decision: 31.10.2022  
Appellant: Abdul Sattar,  
Through Mian Taj Muhammad Keerio,  
advocate.  
The State: Through Mr. Nazar Muhammad Memon, APG.

JUDGMENT

**MUHAMMAD IQBAL KALHORO**, J:- Appellant along with his brother co-accused Bijar, since acquitted, stood a trial in Sessions Case No.23/2011 against allegation of murdering in furtherance of their common intention deceased Ali Gul, brother of complainant, near Old Engineer Bungalow situated in Nabisar Thar, Taluka Kunri on 22.02.2011 at 06:30 p.m. and has been convicted u/s 302(b) PPC and sentenced to suffer life imprisonment and to pay Rs.100,000/- as compensation to the legal heirs of deceased u/s 544-A CrPC with benefit of section 382-B CrPC vide impugned judgment dated 25.02.2014, which he has challenged by means of this appeal.

2. In FIR registered on 23.02.2011 after a delay of 21:30 hours, it is stated that complainant and his deceased brother Ali Gul had gone to Nabisar Town for running some errand and while returning to their village Umaid Ali Chandio Taluka Kunri, they were waylaid by the appellant and his brother near Old Engineer Bungalow situated in Nabisar Thar, Taluka Kunri. Appellant was armed with a pistol whereas acquitted accused was armed with a hatchet. Appellant reminded the complainant that despite their demands they were not withdrawing the case earlier registered against them. Saying so, appellant straightly fired at complainant's brother Ali Gul hitting his chest. Complainant called out for help which attracted PWs Sulleman and Tufail. Seeing them, the appellant and acquitted accused made their escape good. Complainant then found his brother had died at the spot.

3. Appellant was arrested next day on 24.02.2011 and during police remand he led police party to a nearby jungle and produced the crime weapon i.e. pistol on 28.02.2011 regarding which a separate FIR bearing Crime No.13/2011 u/s 13(e) Arms Ordinance was registered against appellant. He has been, however, acquitted since in that case. After investigation, trial commenced in terms of report u/s 173 CrPC submitted by the investigating officer. Prosecution to prove the charge examined 07 prosecution witnesses,

who have produced all necessary documents including FIR, mashirnama of inspection of dead body, inquest report, mashirnama of clothes of deceased, mashirnama of place of incident, mashirnama of arrest of appellant Abdul Sattar, mashirnama of recovery of pistol, mashirnama of arrest of accused Bijar, letter for conducting postmortem, postmortem report, receipt of dead body, letter to Mukhtiarkar, letter to Chemical Examiner, photo copy of letter to Ballistic Expert, report of Chemical Examiner and Ballistic Expert Report.

4. Appellant and co-accused were confronted with evidence of prosecution in their statements u/s 342 CrPC which they denied in toto; and besides submitting documents have examined defense witnesses namely Muhammad Azeem and Aijaz Ali. The trial court after hearing both the parties, thereafter, finding brother of appellant namely Bijar innocent acquitted him and the appellant guilty of the offence has convicted and sentenced him vide impugned judgment, in terms as stated above.

5. Learned defense counsel has contended that appellant is innocent and has been falsely implicated in this case; there are certain contradictions in evidence of prosecution witnesses. The incident hinted in prosecution story appears to be not premeditated or preplanned but happened at the spur of moment, hence, the case does not fall u/s 302(b) PPC but at the most u/s 302(c) PPC; there are also other circumstances like presence of witnesses at the spot, which is by chance; appellant has been acquitted in recovery of crime weapon. He further submits that as per Jail Roll, the appellant has remained in Jail for 21 years 10 months and 16 days including remissions and his unexpired portion of sentence is merely 03 years 07 months and 14 days. If while maintaining conviction of the appellant his sentence is converted into one u/s 302(c) PPC and reduced to the period already undergone by him, he would be satisfied.

6. Learned Additional PG has not opposed this proposal.

7. I have considered submissions of parties and perused material available on record. In this case, prosecution has examined two eyewitnesses: complainant Muhammad Siddique and PW Sulleman. Both the witnesses on certain points have not supported each other. Complainant states in his evidence that after the incident had taken place, PW Sulleman and Tufail, attracted on his cries, had appeared at the spot and saw the accused. PW Sulleman on the contrary has narrated the story in the manner as if he had seen the main incident. Further, complainant says that after arranging vehicle they had first gone to the Police Station with the dead body, while PW Sulleman has stated that after arranging a Taxi they had taken the body of the deceased first to Rural Health Center Nabisar Road where he was pronounced dead by the doctor and only thereafter had approached police for necessary

formalities. Complainant's evidence suggests that deceased had died at the spot. However, Medico Legal Officer PW-5 Dr. Omperkash has asserted in his evidence that probable time between death and injury was about 01 hour. Moreso, in FIR complainant has simply stated that appellant had directly fired at the deceased but in deposition he has revealed that appellant had fired at him but his deceased brother in order to save him jerked forward and came in front of him. The medical evidence, however, states that the direction of bullet was from up to downwards and its trajectory was not as described by the witnesses. Notwithstanding, the witnesses are unanimous that it was appellant who had caused murder of the deceased by straightly firing upon him. Yet, none of them has stated that this murder was preplanned or the appellant had a prior information about the complainant party leaving their village for Nabisar Town to perform some chores. Therefore, to the extent as submitted by learned defense counsel that this is a case at the most u/s 302(c) PPC and not u/s 302(b) PPC, I am convinced and so also learned Additional Prosecutor General Sindh. The jail roll of appellant indicates that the appellant has remained in Jail for 21 years 10 months and 16 days including remissions and his unexpired portion of sentence is merely 03 years 07 months and 14 days

8. Keeping in view all the facts and circumstances discussed above, I am also persuaded to hold that conversion of sentence of the appellant from section 302(b) to 302(c) PPC would be in the interest of justice and would be in accordance with law and relevant facts. Therefore, while maintaining conviction of the appellant, his sentence is modified from section 302(b) to 302(c) PPC and is reduced to the period i.e. 21 years 10 months and 16 days including remissions and including the period appellant has to suffer for failing to pay compensation of Rs.100,000/- to the legal heirs of deceased u/s 544-A CrPC.

9. The appeal is disposed of in the terms as stated above.

JUDGE