

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

Cr. Jail Appeal No.S-160 of 2010

Date of hearing : 10.11.2022

Date of Judgment : 10.11.2022

Appellant Qadir Bux : Through Mr. Zulqarnain Talpur,  
S/o Amir Bux Hajano Advocate.

The State : Through Mr. Muhammad Ali Noonari,  
Deputy Prosecutor General, Sindh.

**J U D G M E N T**

**Muhammad Saleem Jessar. J-** Through instant criminal jail appeal, appellant named above has assailed judgment dated 14.05.2010 passed by learned IInd Additional Sessions Judge, Hyderabad, in Sessions Case No.117 of 2004, (Re: the State v. Qadir Bux), arising out of F.I.R No.09of 2004 registered at P.S Baldia, Hyderabad, under Section 302 PPC, whereby he has been convicted under Section 302(b) PPC and sentenced to suffer rigorous imprisonment for life with benefit of Section 382-B Cr.P.C.

2. The crux of the prosecution case is that complainant Anwar Khursheed lodged instant F.I.R at P.S Balida Hyderabad, alleging therein that on 16.03.2004 he was on duty as Assistant Superintendent, Central Prison, Hyderabad, where Head Warder namely Raza Muhammad Chalgari came and informed him that an incident has occurred in Cell No.5 where accused Qadir Bux caused injuries to deceased Muhammad Saleem, an inmate of the said room. He further reported that Head Warder Raza Muhammad has disclosed before him that he was on duty at Cell No.5 of Central Prison, Hyderabad, when at about 0925 hours, he heard commotion and saw that accused Qadir Bux was sitting on the chest of another prisoner namely Muhammad Saleem and was cutting his throat by an iron strip. It is alleged that this incident was also seen by a Police Constable Muhammad Saleem, who was on duty with him so also by a UTP. They immediately separated the accused from the deceased;

however, noticed that the throat of deceased had already been cut and blood was oozing profusely. According to complainant, he immediately rushed at the place of vardaat, saw the same situation, arranged ambulance and shifted injured Muhammad Saleem to hospital and informed higher officers and then appeared at P.S and lodged F.I.R.

3. After registration of the case, investigation was carried out by the concerned I.O, who after completion of legal formalities, submitted challan before the Court of law having jurisdiction, where a formal charge was framed against accused at Ex-4, to which he pleaded not guilty and claimed his trial.

4. In order to establish the charge, the prosecution examined PW-1/complainant Anwar Khursheed at Ex-6, who produced FIR at Ex-6/A and letter of Superintendent for lodging FIR at Ex-6/B. PW-2 Muhammad Saleem, the Jail Superintendent, was examined at Ex-7. PW-3 Muhammad Afzal (mashir) was examined at Ex-8, who produced mashirnama at Ex-8/A. PW-4 Constable Shahzad was examined at Ex-9, who produced mashirnama of arrest at Ex-9/A. PW-5 Dr. Anwar Hussain Memon was examined at Ex-10, who produced letter of I.O at Ex-10/A, medical certificate at Ex-10/B, letter of I.O for conducting postmortem of deceased at Ex-10/C and the postmortem report at Ex-10/D. PW-6 Raza Muhammad (Head Warder) was examined at Ex-11. PW-7 Chattar Mal (Tapedar) was examined at Ex-12. PW-8 SIP Muhammad Umar was examined at Ex-13, who produced mashirnama of injuries of deceased at Ex-13/A, mashirnama of dead body at Ex-13/B, inquest report at Ex-13/C, mashirnama of securing cloths of deceased at Ex-13/D and chemical examiner's report at Ex-10/E. PW-9 ASI Najamuddin was examined at Ex-16. Thereafter, learned DDPP closed the side of prosecution vide his statement at Ex-17.

5. Thereafter, statement of the accused under Section 342 Cr.P.C, was recorded at Ex.18, wherein he denied the allegations leveled by the prosecution and prayed for justice. The accused neither examined himself on oath as provided under Section 340(2) Cr.P.C nor lead any evidence in defense in disproof of the charge.

6. After formulating the points for determination, recording evidence of the prosecution witnesses and hearing learned Counsel for

the parties, trial Court vide impugned judgment convicted and sentenced the appellant in the terms as stated above and the appellant through this appeal has challenged his conviction.

7. In compliance of directions contained under order dated 31.10.2022, the Jail Superintendent Central Prison, Hyderabad vide his letter dated 04.11.2022 ha submitted jail roll of appellant which reveals that the appellant has served out the sentence of 18 years 07 months and 17 days upto 03.11.2022 without remission as he being condemned prisoner was not awarded any remission. I have gone through the jail roll and remarks made by the Senior Superintendent Jail and before discussing further, it will be appropriate to reproduce the said remarks which reads as under:-

“The Criminal Jail Appeal No.D-235/2011 confirmation case No.12/2011 against the conviction in FIR No.02/04 has been dismissed by the Honourable High Court of Sindh, Circuit Court, Hyderabad vide judgment dated 17.02.2017, now Jail Petition No.245/2017 is pending before Honourable Supreme Court of Pakistan, Islamabad.

8. Since the appellant was awarded death penalty in other criminal case for which a criminal petition is pending adjudication before the Apex Court; however, in this case he was awarded life imprisonment; therefore, should not have been treated as condemned prisoner.

9. Learned Counsel for appellant argued that appellant being insane was confined in insane ward where the deceased, who too was insane, was confined. Learned Counsel next argued that weapon allegedly used in commission of the offence was an iron strip which cannot be provided to any prisoner except the cooperation or collusion of jail staff / officers. He; therefore, submitted that infact the murder of deceased was committed by the jail officials themselves while he was being tortured and such specific suggestion was put from each and every prosecution witness before trial Court; even the appellant had also raised this plea at the time of his statement recorded under Section 342 Cr.P.C. Surprisingly enough that trial Court has ignored such valuable plea of appellant and even did not keep it in juxtaposition with prosecution evidence. Learned Counsel further submitted that jail warder namely Raza Muhammad is a notorious warden of the jail department who is known and famous in torturing the prisoners and the deceased being foreign national was not in a position to grease the palms of said Raza

Muhammad; therefore, he tortured him which resulted into his death. Learned Counsel further went on to say that the jail warder as well jail staff in order to save their skin from senior officers had involved the appellant in this case falsely. The false implication of the appellant can be gathered from the fact that offensive weapon shown to have been used in commission of alleged offence cannot be managed or imported by the appellant for particular task; hence, he is entitled for leniency and this is the case where leniency may be extended. Learned Counsel while summing up his arguments submitted that by considering the above discrepancy as well mitigating circumstances, the sentence of appellant may be converted from 302(b) PPC to 302(c) PPC.

10. Learned D.P.G appearing for the state when confronted with above arguments and after going through the evidence as well record has very candidly recorded his no objection for conversion of the sentence from 302(b) to 302(c) PPC.

11. Heard learned Counsel for the appellant, learned D.P.G appearing for the State and perused the record.

12. Admittedly, the appellant was shown arrested on 16.03.2004 from jail premises where he was already suffering his sentence awarded to him in a murder case bearing Crime No.02 of 2004 registered at P.S Matli, Badin, of which appeal is pending before the Apex Court. The allegation against the appellant is that he allegedly caused iron strip blow to deceased which resulted into his death. Here it is to be seen whether the appellant caused said blow to deceased in jail premises is a question which requires deep deliberation. Per learned Counsel that deceased was murdered by the jail officials themselves as he was being tortured by them and this specific suggestion was also put to every prosecution witness before trial Court; and that appellant raised this plea in his statement under Section 342 Cr.P.C but learned trial Court has ignored such a specific and cogent plea of appellant and thereby passed impugned judgment. The appellant has allegedly used iron strip in allegedly murdering of deceased and it is very surprising to note, how the appellant got said iron strip within jail premises where he was already suffering his sentence in a murder case as referred above. If the contents of prosecution version may be presumed to be true even then the iron strip without aid or cooperation of any of the jail staff cannot be procured to a prisoner and thus the argument of learned counsel to this

effect is very much logical and cannot be thrashed out as how the appellant has gathered and imported such an offensive weapon which could only be gathered with the help of jail staff. In such circumstances, the plea taken by appellant that deceased was murdered by jail staff themselves to some extent appears to be a forceful and said murder has been turned to him. Therefore, I, while taking lenient view against the appellant, hold that the appellant has made out his case where he deserves leniency being proposed by the learned Counsel. Besides, the sentence already undergone by the appellant is sufficient to learn lesson from.

13. In view of above, the appeal is partly allowed; the conviction of the appellant for an offence under Section 302(b) PPC is converted into an offence under Section 302(c) PPC and consequently his sentence is reduced from imprisonment of life to one already undergone by him. The benefit of Section 382-B Cr.P.C is ordered to be extended to the appellant. It is pertinent to mention here that jail roll of appellant Qadir Bux submitted by the Senior Superintendent, Central Prison, Correctional Facility, Hyderabad on the direction of this Court, reflects that appellant has served out 18 years 07 months and 17 days of his sentence upto 03.11.2022 excluding remission, as such, after modification of impugned judgment as well extending benefit under Section 382-B Cr.P.C, the appellant has completed his whole sentence and thereby he is liable to be released. Accordingly, the appellant, who is confined in jail; shall be released forthwith from the case being FIR No.09 of 2004 of P.S Baldia, Hyderabad, if his custody is no more required in any other custody case.

Appeal stands disposed of in the above terms.

**JUDGE**

Shahid