

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

Criminal Jail Appeal No.S-203 of 2017

Date of hearing: 16.12.2022
Date of decision: 16.12.2022
Appellant: Ali Bux through Mr. Ghulamullah Chang, advocate.
The State: Through Mr. Nazar Muhammad Memon, APG.

JUDGMENT

MUHAMMAD IQBAL KALHORO, J:- Through this Criminal Jail Appeal, the appellant has challenged the judgment dated 20.09.2016, passed by learned Sessions Judge, Mirpurkhas in Sessions Case No.70 of 2009 arising out of Crime No.17 of 2009 registered at PS Mirpur Old for the offence under sections 302, 324, 147, 148, 149, 504 PPC, whereby the appellant has been convicted and sentenced for the offence u/s 302 PPC to undergo R.I. for life as “Tazir” and to pay compensation of Rs.100,000/- and in case of default to undergo S.I. for three months. However, the benefit of section 382-B Cr.P.C. was extended to the appellant.

2. As per brief facts, on 21.04.2009 complainant alongwith his sons Pir Bux, Abdullah and relatives Juman, Murad, Abdul Hakeem and Haji Chutto was present in marriage ceremony of one Rehmatullah Kumbhar in village Vesro, Taluka 13-Mile, District Mirpurkhas when at about 2130 hours Appellant Ali Bux, co-accused Gulzar Sheedi, Khan Muhammad alias Khano Sheedi, Sahib Dino and Ashiq Sheedi all duly armed with hatchets came there and after hurling abuses said that you have abused us in marriage. Juman replied that they have not abused any one. Upon which, with intention to commit murder, appellant Ali Bux caused hatchet blows on different body parts of Juman, co-accused Gulzar caused hatchet blow to complainant, Khan Muhammad caused hatchet blow to Abdullah, Sahib Dino caused hatchet below to Murad, Ashiq pressed neck of Pir Bux. Injured were shifted to Civil Hospital Mirpurkhas from where juman being seriously injured was referred to Hyderabad but he succumbed to injuries on way. On 22.04.2009 at 0130

hours complainant after getting first aid from hospital came at PS Mirpur Old and registered FIR.

3. After investigation, the Challan was submitted in the court and trial commenced. In the trial, prosecution examined as many as 10 witnesses including Medical Officer and produced all the necessary documents: FIR, Memos, etc. At the conclusion of trial, statement of appellant was recorded u/s 342 CrPC. He has pleaded his innocence and has denied allegations. Vide impugned judgment appellant has been found guilty of charged offence and has been sentenced as stated above. By means of the instant appeal, appellant has challenged his conviction and sentence.

4. Learned counsel after arguing the case at some length and referring to the jail roll of the appellant dated 08.11.2022 reflecting that appellant has remained in jail for thirteen (13) years six (06) months and twenty one (21) days, has earned remissions of nine (09) years, eight (08) months and fifteen (15) days which will become twenty three (23) years, three (03) months and six (06) days, and his remaining portion is one (01) year eight (08) months and twenty four (24) days, has prayed for reduction of sentence to the period already undergone by him by converting his sentence from u/s 302(b) PPC to 302(c) PPC on the ground that the prosecution has failed to prove motive of the offence; there is contradiction between medical evidence and the oral account forwarded by the eyewitness; and that incident even as per F.I.R. and evidence occurred without any premeditation and preplanning at the spur of moment. In support of his contentions he has relied upon the case law reported as 2022 SCMR 1328.

5. Learned Additional Prosecutor General Sindh has recorded no objection to reduction and conversion of sentence from u/s 302(b) to 302(c) PPC in view of above.

6. I have heard the learned counsel for the appellant, learned Additional Prosecutor General, Sindh and perused the available record with their assistance including the case law cited at bar.

7. In order to prove its case, the prosecution has mainly relied upon the statements of injured witnesses namely Umed Ali (PW-1), Muhammad Murad (PW-2), and the statements of Abdul Hakeem (PW-3) and Abdullah (PW-4). These prosecution witnesses were subjected to lengthy cross-examination by the defence but nothing favourable to the

appellant-convict or adverse to the prosecution could be produced on record. These PWs remained consistent on each and every material point. They have deposed exactly in the manner alignable to the circumstances of this case. Therefore, it can safely be concluded that the ocular account furnished by the prosecution is reliable, straightforward and confidence inspiring. As for as minor contradictions in the statements of the PWs are concerned, the same are neither dishonest nor are sufficient to discard the testimonies of the PWs of the ocular account.

8. The medical evidence available on the record is in line with the ocular account so far as the nature, locale, time and impact of the injury on the person of the deceased is concerned. So far as the question that the PWs were closely related to the deceased, therefore, their testimony cannot be believed to sustain conviction of the appellant-convict, is concerned. It is settled principle of law that mere relationship of the prosecution witnesses with the deceased cannot be a ground to discard the testimony of such witnesses unless previous enmity or ill will is established on the record to falsely implicate the accused in the case but no such thing could be brought on record. All these PWs have reasonably explained their presence at the place of occurrence. Learned counsel for the appellant-convict could not point out any reason as to why the complainant has falsely involved the appellant-convict in the present case and let off the real culprit. Substitution in such like cases is a rare phenomenon. The complainant would not prefer to spare the real culprit and falsely involve the appellant without any rhyme and reason. In these circumstances, it can safely be said that the prosecution has brought on record reliable evidence to sustain the conviction of the appellant.

9. However, so far as the quantum of punishment is concerned, admittedly in the present case, parties were not inimical to each other and there was no previous ill will between the deceased and the appellant. In the FIR it is specifically mentioned that during a marriage ceremony, altercation took place between the complainant party and appellant party on some issue. At the spur of moment, suddenly altercation took place and according to prosecution's own case, there were exchange of words between the parties. PW.4 Abdullah while appearing in the court also categorically mentioned that "the accused Gulzar asked Jumman that he abused them, on which Juman replied that he had not abused any one. Thereafter, a fight happened....". All

prosecution witnesses during investigation remained silent regarding the detail of said "abuses" and an evasive motive was put up in the FIR. More so, PW.5 Haji Chutto in his cross-examination has categorically stated that "It is correct to suggest that before this incident there was no enmity between the Sehtas and Sheedies." The above mentioned evidence of the witnesses clearly indicate that suddenly there was altercation, followed by exchange of abusive language between the appellant party and complainant party. And all of a sudden this occurrence took place indicating that there was no premeditation on the part of appellant and at the spur of the moment due to abusive language, in the heat of passions, appellant gave blows to the deceased with the hatchet. So all the ingredients of exceptions are born out from the prosecution case and it is a case falling under section 302(c), P.P.C. and not section 302(b), P.P.C.

10. For foregoing discussion, this appeal is partly allowed. The jail roll of the appellant dated 08.11.2022 reflects that appellant has remained in jail twenty three (23) years, three (03) months and six (06) days including remission, and his remaining portion is one (01) year eight (08) months and twenty four (24) days. His conviction in view of above discussion and while relying on the case of Zeeshan @ Shani vs. The State (PLD 2017 Supreme Court 165), is converted from section 302(b) PPC to section 302(c) PPC and his sentence is altered and reduced to the period already undergone by him including the period of 03 months which, in addition, appellant is required to endure in default of Rs.100,000/- as compensation u/s 544-A CrPC. The said liability shall remain intact, which however shall be recovered from him as arrears of land revenue after his release. Accordingly the appellant shall be released forthwith if not required in any other case.

11. Appeal is disposed of in the above terms along with pending application.

J U D G E

Irfan Ali