

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

Cr. Appeal No.S-49 of 2020

Dates of hearings : 18.11.2022, 25.11.2022  
and 09.12.2022.

Date of Judgment : 09.12.2022

Appellants Sona Khan : Through Mr. Ghulam Shabbir Mari,  
S/o Nota Khan & Advocate.  
Muhammad Hussain  
S/o Sona Khan.

The State : Through Mr. Muhammad Ali  
Noonari, D.P.G Sindh.

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

**Muhammad Saleem Jessar. J.-** Through captioned Criminal Appeal, appellants have called in question the judgment dated 25.01.2020 passed by learned Model Criminal Trial Court-I, Hyderabad, in Sessions Case No.663 of 2000, (Re: The State v. Sona Khan and others), arising out of F.I.R No.51 of 2000 registered at P.S Matiyari, under Sections 302, 324, 504, 34 PPC, whereby they have been convicted under Section 302(b) PPC and sentenced to suffer rigorous imprisonment for life and to pay compensation of Rs.100,000/- each, to be paid to legal heirs of deceased in terms of Section 544-A Cr.P.C, in default whereof, to suffer simple imprisonment for six months. Both accused have also been convicted for offence under Section 337-H(ii) PPC and sentenced to suffer rigorous imprisonment for three months. Besides, accused Sona Khan has been convicted for offence under Section 504 PPC and sentenced to suffer rigorous imprisonment for two years. However, benefit of Section 382-B Cr.P.C has been extended to both appellants.

2. Concisely the facts of the case are that complainant Abdul Khalique lodged instant FIR at PS Matiyari alleging that he

owned agricultural land in Deh Arain and accused Sona Khan's land is near his land. The sons of Sona Khan used to damage his crops; besides used to abuse his farmers. On the day of incident in morning time, Maqsood Ahmed, his brother, Nasir, his nephew and Muhammad Qasim were available in Otaq and Muhammad Nawaz, who is also brother of complainant, went to see cotton crops. On his return he disclosed that Sona Khan and his son Iqbal alias Haji damaged their cotton crops; on his restraining they exchanged hot words and threatened him. After disclosing this fact, brother of complainant went to Otaq, when at 10:00 a.m. Sona Khan with double barrel gun, Riaz with 7-MM rifle, Muhammad Hussain with 7-MM rifle and Iqbal alias Haji with pistol came there and said that Muhammad Nawaz has exchanged hot words and they will kill him. Accused Muhammad Hussain fired straightly at Muhammad Nawaz from his rifle which hit at right side of his chest and he fell down. Co-accused Iqbal alias Haji also fired from his respective weapon which hit Muhammad Nawaz at his left leg and then all accused fired at complainant party but they saved themselves. On hearing report of firing, PWs Muhammad Malik, brother of complainant and Driver Baloo, came running and accused persons while seeking them fled away. Thereafter, complainant's brother Muhammad Nawaz succumbed to his injuries. Hence, FIR of incident was lodged.

3. After registration of the case, investigation was carried out by the Investigating Officer concerned, who after completion of legal formalities, submitted challan against accused Sona Khan and Muhammad Hussain before the Court of law having jurisdiction, showing co-accused Iqbal alias Haji and Riaz as absconders, where a formal charge was framed against accused at Ex-5, to which the accused pleaded not guilty and claimed their trial.

4. In order to establish the charge, the prosecution examined PW-1/complainant Abdul Khaliq at Ex-12, PW-2 Nasir Ali at Ex-13, PW-3 Khan Muhammad at Ex-14, PW-4 Qasim at Ex-15. PW-5 Barkat Ali at Ex-16, PW-6 Barad at Ex-18, PW-7 Dr. Ghulam Hussain at Ex-22, PW-8 Hassan Deen at Ex-26, Thereafter, prosecution closed its side vide statement at Ex-27.

5. Statements of the accused under Section 342 Cr.P.C were recorded at Ex.28 & 29 respectively, wherein they denied the allegations leveled by the prosecution and claimed innocence. The accused neither examined themselves on oath as provided under Section 340(2) Cr.P.C nor led any evidence in their defense in disproof of the charge.

6. Learned Trial Court after full dressed trial, vide impugned judgment dated 25.01.2020, convicted and sentenced the appellants in the terms as stated above and appellants through these appeals have challenged their conviction recorded by the trial Court.

7. Learned Counsel for appellants submits that appellant Sona Khan is aged about 92 years; whereas the role against him is of instigation only. He next submits that allegation against appellant Muhammad Hussain is that he allegedly caused rifle shot injury to deceased Muhammad Nawaz which hit him on his chest from right side; whereas co-accused Iqbal alias Haji is also alleged to have fired from his rifle which landed on left leg of the deceased; whereas Riaz alias Haji had allegedly fired upon deceased which landed on left side of his chest and said Raiz alias Haji is absconding. He further submits that no offensive weapon was recovered from the possession of appellant Muhammad Husain and per jail roll dated 18.04.2020 appellant Muhammad Hussain has served out 15 years 07 months upto to 16.04.2020 and earned remission of 08 years 07 months 01 day; whereas remaining portion of his sentence as shown in jail roll is only 03 months and 29 days. He further submits that appellant Muhammad Hussain has served out the substantive portion of his sentence. He also submits that per memo of recovery dated 17.10.2000 available at Page-116 of the paper book, two licensed weapons of the appellants were taken away by the police and same have not been returned to them yet; however, an unlicensed weapon was also recovered from co-accused Iqbal alias Haji. He further submits that per FSL report available at Page-151 of the paper book, the offensive weapons were delivered to the Laboratory on 28.10.2000 with delay of about eleven days and no plausible explanation has been furnished by the prosecution for

sending of the weapons with certain delay. He further submits that there is landed dispute between the parties and the complainant party intending to grab the land belonging to the appellants; hence, instant case was cooked up against them. Before concluding his arguments, learned Counsel for appellants submits that due to pointed discrepancies in the prosecution evidence, coupled with the fact that in earlier round of litigation appellant Sona Khan was awarded 10 years punishment; whereas appellant Muhammad Hussain has served out substantive portion of his sentence, the appellants deserve leniency; hence, pray for conversion of their sentences from Section 302(b) to Section 302(c) PPC. In support of his contentions, he places reliance upon the cases reported as 1995 SCMR 127, 2017 SCMR 486, 2019 SCMR 1417, 2016 P.Cr.LJ 541, 2018 YLR 1855, 2016 P.Cr.LJ Note 30, 2012 YLR 2513.

8. Learned Deputy Prosecutor General appearing for the State submits that absconding co-accused Riaz had fired from his rifle which landed on left side of the chest of deceased with identical role and cause of death of deceased as shown by Medico Legal Officer is the injuries allegedly caused by appellant Muhammad Hussain as well Riaz alias Haji; however, the injury caused by absconding accused Riaz alias Haji is severe than the injury caused by appellant Muhammad Hussain; therefore, he has no objection if by dismissing the appeal on merits conviction may be maintained and sentence awarded to appellants Muhammad Hussain and Sona Khan may be altered / converted from 302(b) PPC to 302(c) PPC.

9. The complainant despite issuance of notices to him repeatedly has chosen to remain absent.

10. Heard learned Counsel for the appellants as well learned Deputy Prosecutor General appearing for the State and perused the record made available before me.

11. The overall examination of the evidence, it reflects that ocular account as well medical evidence is in series of the offence committed by the appellants which does show that deceased had died by un-natural death. It appears that prosecution has succeeded in establishing its charge against appellants to the extent

that appellants have committed murder of deceased by causing firearm injuries from their respective weapons. In first round of litigation, vide judgment dated 02.11.2011 appellant Muhammad Hussain was awarded imprisonment of life; whereas appellant Sono Khan was awarded sentence to the extent of 10 years rigorous imprisonment. The said conviction was challenged by both the appellants before this Court by filing Criminal Appeal No.D-362 of 2011 which was disposed of by this Court by a judgment dated 18.09.2019 and consequently the case was remanded to the trial Court. The trial Court as per directions proceeded with the case and after concluding trial, vide impugned judgment dated 25.01.2020, convicted and sentenced both the appellants to imprisonment of life maximum. The allegation against appellant Sona Khan is that he only instigated co-accused for causing murder of deceased; whereas the allegation against appellant Muhammad Hussain as leveled by the prosecution is that he allegedly caused rifle shot injury to deceased which hit him on his chest from right side and absconding co-accused Iqbal alias Haji is alleged to have fired from his rifle which landed on left leg of deceased while absconding co-accused Riaz alias Haji is alleged to have fired upon deceased which fire landed on left side of his chest. No offensive weapon was recovered from possession of appellant Muhammad Hussain and per jail roll, appellant Muhammad Hussain has served out 15 years and 07 months upto to 16.04.2020 and earned remission of 08 years 07 months 01 day; whereas remaining portion of his sentence as shown in jail roll is only 03 months and 29 days. Hence, appellant Muhammad Hussain has served out his substantive portion of his sentence. As far as role against appellant Sona Khan is concerned, his role is only instigating other accused in commission of the offence. Per FSL report available at Page-151 of the paper book, the offensive weapons were sent to the Laboratory on 28.10.2000 with delay of about 11 days and no such explanation has been furnished by the prosecution for sending said weapons with certain delay. The delay in sending weapons to the Laboratory has always been considered by the Superior Courts to be fatal to the prosecution case.

12. Admittedly, the eye witnesses of the case have fully explained the occurrence as well each and every aspect of occurrence in sequence. In instant case, the complainant is the brother of deceased while other witnesses are close relatives of complainant who were present at the time of incident. The prosecution has not made any irregularity which may warrant by this Court to interfere with the verdict of the trial Court. The ocular evidence also finds corroboration from the medical evidence actuating the cause of death and time of incident as well weapon used in commission of the offence. The trial Court's verdict in such situation cannot be interfered; however, keeping in view the afore-noted discrepancies as well prayer made by learned Counsel for appellants for converting the case from Section 302(b) PPC to Section 302(c) PPC on the ground that appellant Sona Khan is aged about 92 years and role against him is only of instigation, and appellant Muhammad Hussain has served out his substantive sentence, the conviction and sentence of appellants deserve to be altered / converted to meet the ends of justice.

13. In view of above, Criminal Appeal No.S-49 of 2020 is **dismissed**. The conviction and sentences recorded by trial Court are maintained. But, as discussed above, their conviction and sentences are altered / converted from offence under Section 302(b) PPC into an offence under Section 302(c) PPC. Consequently, their sentences are modified and reduced from imprisonment of life to one already undergone by them. The impugned judgment dated 25.01.2020 vide Sessions Case No.663 of 2000 arising out of F.I.R No.51 of 2000 of P.S Matiyari is modified accordingly to the extent of appellants Sona Khan and Muhammad Hussain only. Appellants are present on bail; their bail bonds stand cancelled and surety(ies) is/are hereby discharged.

14. This Criminal Appeal is disposed of in above terms alongwith pending application(s).

JUDGE

