

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

Criminal Appeal No.S-106 of 1997

Appellants: Rasool Bux, Pairoz, Ahmed and Bux Ali present on bail through Mr. Muhammad Ishaque Khoso, Advocate.

Appellants Sobho and Lakhano since expired, as such, proceedings against them have been abated vide order dated 29.08.2022.

Respondent: The State through Mr. Shahid Ahmed Shaikh, Deputy Prosecutor General Sindh.

Date of hearing: **05.09.2022.**

Date of Judgment: **05.09.2022.**

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

**AMJAD ALI SAHITO, J.** Being aggrieved and dissatisfied with the judgment dated 29.10.1997, passed by the learned 1<sup>st</sup> Additional Sessions Judge, Mirpurkhas in Sessions Case No.133 of 1986 arising out of the FIR No.76/86 for an offence under sections 147, 148, 149, 302, 307, 504 PPC registered at PS Taluka Mirpurkhas, whereby the appellants were convicted under section 302/34 PPC for murdering deceased Khuda Bux and sentenced to suffer Rigorous Imprisonment for life and pay fine of Rs.50,000.00 [Rupees fifty thousand only] each or in default two years more R.I. It was ordered that in case fine amount is recovered, 50% of the same be paid to the legal heirs of deceased. The appellants namely Pairoz and Rasool Bux were also convicted for the offence under section 342/34 (Old section 307) and sentenced each of them R.I. for two years with fine of Rs.2000/- each; in case of recovery of fine amount, 50% of the same was ordered to be paid to injured Usman. However, the

benefit of section 382-B Cr.P.C. was also extended to the appellants.

**2.** The brief facts of the prosecution case are that on 19.07.1986 at about 03.00 p.m. at katcha road near village Rano Katchhi taluka Mirpurkhas all the accused duly armed with deadly weapons assembled unlawfully with common intention and attacked on complainant party and also murdered Khuda Bux by giving him sharp side of hatchet injuries and also injured Usman. The case was registered. After usual investigation, final report was submitted before concerned Court of law. It is also stated that this case is counter case of S.C. No.132 of 1986 filed by present accused against complainant party.

**3.** After observing all formalities including recording of statements of complainant, eye witnesses, mashir, medico-legal officer, tapedar and statements of accused under section 342 Cr.P.C., the learned trial Court convicted and sentenced the appellants / accused in the manner as stated above.

**4.** Learned counsel for the appellants / accused contended that the incident is taken place promptly when the complainant including deceased attacked upon accused party, resultantly free fight between the parties took place. There are material contradictions in the prosecution evidence. There is also suppression of causing injuries to the appellants not only at the hands of complainant but also deceased. He contended that the complainant including his witnesses are interested witnesses, the deceased died due to the attack of complainant party. He has further contended that the complainant party is aggressor while accused were aggressed by the complainant party. The appellants are innocents and have been implicated falsely. He, therefore, prayed that the appellants may be acquitted of the charge OR ultimately since the death of deceased is result of free fight between the parties and there is possibility that the appellants had exercised their right of defence, which cannot be ruled out as the complainant party in order to grab the land of appellant Ahmed attacked upon the appellants; and, no intention to commit murder of deceased by the appellants appears in the

case, as such, this is also fit case for conversion of sentence from section 302 (b) PPC to section 302 (c) PPC. In support of his contentions, he has relied upon the cases reported in 1976 P Cr.L.J 1437, 2008 P Cr.L.J 927, 2015 P Cr.L.J 712, 2007 M L D 414 and 2011 SCMR 45.

**5.** On the other hand, learned D.P.G. Sindh appearing on behalf of the State has contended that as per FIR the dispute between the parties appears to be over harap of agricultural land. He contended that on the day of incident the accused were standing duly armed with hatchets, out of which accused Bux Ali and Pairoz abused and made hakals and asked that the complainant party will not be spared; and on saying so the accused Rasool Bux and Pairoz started beating complainant; all the accused collectively caused hatchet blows of sharp side to the son of complainant namely Khuda Bux, who sustained injuries and so also caused injuries to complainant at his hand and right arm. This incident is witnessed by numerous prosecution witnesses. The deceased had received as many as nine injuries, which resulted the death of deceased and it is supported in the post mortem report. Learned D.P.G. Sindh has further contended that ocular and medical version both have supported the prosecution case; and also admitted that the counter case was also lodged by the accused party against complainant party. However, he contended that this is a fit case for conversion of the sentence from section 302 (b) PPC to section 302 (c) PPC and extended his no objection.

**6.** I have heard learned counsel for the parties and have minutely gone through the material available on record with their able assistance.

**7.** From perusal of the record, it is crystal clear from the ocular as well medical evidence that the deceased expired by unnatural death. During course of cross-examination, complainant Usman deposed that *"It is correct to suggest that Pairoz received injuries at the hands of my deceased son Khuda Bux. Voluntarily says that we gave injuries to the accused in our defence... It is correct to suggest that Bux Ali received injuries at*

*the hands of my son Khuda Bux in the fight... It is correct to suggest that we caused injuries to accused Rasool Bux and Ahmed in fight. I was armed with lathi and my son Khuda Bux was armed with hatchet.... I may have got mentioned in the F.I.R. the fact that Khuda Bux also caused injuries to accused. I have got it included definitely. I am illiterate therefore cannot say whether the word 'in defence' has been written in the FIR or not. I have not written in the FIR that accused received injuries at the hands of deceased Khuda Bux."* Whereas, PW Bandey Ali deposed in his cross examination that "At the time when we had taken our brother from the place of incident, I did not see accused Pairoz lying injured at the place of incident, so also accused Rasool Bux. It is correct that my father is accused in the counter-case which is filed by accused Sobho." PW Manthar has also deposed during cross-examination that "It is incorrect that we again came and caused injuries to accused Sobho." Whereas PW Sardar Mohammad in his cross-examination has admitted that "I had also seen accused Sobho at the P.S at that time. He had also come to the P.S to lodge the F.I.R." PW Ali Muhammad in his cross-examination deposed that "I had not seen the injury on the persons of accused Sobho and Rasool Bux." Tapedar Shafi Muhammad was also examined, who in cross-examination deposed that "It is correct that apart from village of Sobho and Katchies there was no other village in the near vicinity of the place of incident. It is correct that I have not shown village of complainant in the site sketch."

**8.** In their statements recorded under section 342 Cr.P.C., all the appellants have denied the allegations levelled by the complainant against them. Accused Sobho stated that; "I own land near the place of incident which the complainant party wanted to purchase the same and we were not willing to it. Therefore the complainant party attacked upon us and caused injuries to us. Khuda Bux had received injuries at the hands of his companions. I have not caused injury to anyone, but on the contrary I received injuries at the hands of complainant party as they wanted to eject from the land. I am innocent. It is further submitted that the complainant party attacked us in the morning

on the day of incident, in which my son Peroz was injured so also others while the injured were being brought to hospital.” Accused Sobho also produced copy of FIR bearing crime No.77 / 1986 to have lodged against the complainant party.

9. From the entire prosecution evidence, it appears that some of the witnesses have suppressed the fact that the appellants had received any injury. It further appears that deceased was killed during quarrelling or fighting with each other by complainant and accused party. The site plan shows the village of accused is situated nearby to the place of incident. In such circumstances, I observe that the appellants had no intention to kill deceased as defined under part (a) of section 300 PPC, hence, the sentence under section 302 (b) PPC is not justifiable but the case of appellants fall under section 302 (c) PPC. In this regard, I am also fortified with the cases of **‘AMJAD SHAH v. THE STATE’ [PLD 2017 Supreme Court 152]**, **‘ZEESHAN @ Shani v. THE STATE’ [PLD 2017 Supreme Court 165]**, **‘AZMAT ULLAH v. The STATE’ [2014 SCMR 1178]**.

10. In the case of **‘ZEESHAN @ Shani’ [supra]**, the Honorable Supreme Court has held that:-

*11. The appellant did not premeditate the killing, nor could he have since the complainant party had arrived unannounced at his house. Needless to state that if the complainant side had not sought out the appellant no fight would have occurred. Be that as it may, the appellant should not have struck the deceased with force and that too on a vital part of his body. The appellant, however, struck only a single blow with a simple stick and not with any weapon. Both the victim and the perpetrator were young men and had joined hands to render slaughtering services together. Unfortunately, a dispute over the share of the takings resulted in the death of one of them. There is no reason for us to take a different view from the one taken in the afore-cited precedents. In this case the appellant without premeditation and in the heat of a free fight had struck the deceased with a single blow of a stick. In such circumstances, his case would come within clause (c) of section 302 PPC.*

*12. Therefore, in view of the facts and circumstances of the case it would be appropriate to alter the conviction of the appellant recorded under section 302 (b) PPC to one under section 302(c) PPC and, consequently, reduce his sentence to ten years rigorous imprisonment whilst maintaining the sentence of fine and the simple imprisonment to be undergone for failure to pay fine. As held by the Courts below the appellant will also receive the benefit of section 382-B of the Cr.P.C.”*

In another case of **‘AZMAT ULLAH’ [supra]**, the Honorable Supreme Court has held that:-

*“4. ....A bare perusal of the F.I.R., the statements made by the eye-witnesses before the learned trial Court and the findings recorded by the learned courts below clearly shows that there was no background of any ill-will or bitterness between the appellant and his*

*deceased brother and that the incident in issue had erupted all of a sudden without any premeditation whatsoever. The medical evidence shows that the deceased had received one blow of a chhurri on his chest whereas another blow was received by him on the outer aspect of his left upper arm. The doctor conducting the post-mortem of the dead body had categorically observed that both the injuries found on the dead body of the deceased could be a result of one blow of chhurri. These factors of the case squarely attract Exception 4 contained in the erstwhile provisions of section 300, P.P.C. It has already been held by this Court in the case of Ali Muhammad v. Ali Muhammad and another (PLD 1996 SC 274) that the cases falling in the exceptions contained in the erstwhile provisions of section 300, P.P.C. now, attract the provisions of section 302(c), P.P.C. The case in hand was surely a case of lack of premeditation, the incident was one of a sudden fight which was a result of heat of passion developed upon a sudden quarrel and no undue advantage had been taken by the appellant nor had he acted in a brutal or unusual manner. In these circumstances Exception 4 contained in the erstwhile section 300, P.P.C. squarely stood attracted to the case in hand and, thus, the case against the appellant fell within the purview of the provisions of section 302(c), P.P.C.*

*5. Keeping in view the facts and circumstances of the case this appeal is partly allowed, the conviction of the appellant for an offence under section 302(b), P.P.C. is converted into that for an offence under section 302(c), P.P.C. and consequently his sentence is reduced from rigorous imprisonment for twenty-five years to rigorous imprisonment for ten years. The sentence of fine passed against the appellant by the learned trial court and upheld by the Lahore High Court, Lahore has been found by us to be unwarranted because section 302(b) or 302(c), P.P.C. do not contemplate any such sentence. Instead of fine we direct that the appellant shall pay a sum of Rs. 50,000 to the heirs of the deceased by way of compensation under section 544-A, Cr.P.C. or in default of payment thereof he shall undergo simple imprisonment for six months. The benefit under section 382-B, Cr.P.C. shall be extended to him. This appeal is disposed of in these terms.”*

**11.** The instant case was registered in the year 1997 and the appellants are appearing for last 25 years. From the above discussion the appeal is partly **allowed**, the conviction of the appellants for an offence under section 302(b) PPC is converted into that for an offence under section 302 (c) PPC and consequently the sentence of appellants namely Ahmed, Pairoz and Rasool Bux is reduced from Imprisonment for life to R.I for seven years while sentence of appellant Bux Ali is also reduced to three years including fine amount. The impugned judgment of conviction and sentence passed by the learned trial Court is modified accordingly. The benefit of section 382-B Cr.P.C. is extended to the appellants.

**12.** It would be very essential to mention here that the Jail Roll of the appellants submitted by the Senior Superintendent Officer Incharge, Central Prison Correctional

Facility, Hyderabad at the direction of this Court, reflects that the appellants namely Ahmed, Pairoz and Rasool Bux served out seven years and twenty seven days while appellant Bux Ali has served out three years and seventeen days of their sentences including remissions, as such, after modification of impugned judgment, the appellants have completed their reduced sentences, therefore, they are released. Their bail bonds stand cancelled and surety[-ies] stand discharged. Office is directed to return the surety papers to the surety [-ies] after proper verification and identification.

**13.** This appeal is disposed of in the above terms.

**JUDGE**