

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

Criminal Appeal No.S-117 of 1996

Appellant: Allah Rakhio through Mr. Ghulamullah Chang, Advocate.

Respondent: The State through Ms. Rameshan Oad, Assistant Prosecutor General Sindh.

Date of hearing: **12.09.2022.**

Date of Judgment: **12.09.2022.**

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

**AMJAD ALI SAHITO, J.** The appellant filed instant Criminal Appeal by challenging the judgment dated 31.03.1996, passed by the learned II<sup>nd</sup> Additional Sessions Judge, Badin in Sessions Case No.129 of 1990 arising out of the FIR No.58/1990 for an offence under sections 302 PPC registered at PS Tando Ghulam Ali, whereby the appellant was convicted under section 302 (b) PPC for murdering deceased Imam Bux and sentenced to suffer Rigorous Imprisonment for life and pay fine of Rs.1,0,000.00 [Rupees ten thousand only], as compensation to the heirs of deceased. In case of default of payment, accused shall suffer R.I. for one year more. However, the benefit of section 382-B Cr.P.C. was also extended to the appellant.

**2.** The brief facts of the prosecution case as described in the FIR lodged by complainant Mohammad Umer on 29.07.1990 are that they are four brothers. He and his brother Imam Bux reside together along with their family. Imam Bux was younger to all brothers, who was married and was having ten acres of land. About three years prior to this incident, accused Allah Rakhio had remained hari of Imam Bux thereafter he was removed from harap. On 28.07.1990 in evening time, Imam Bux went for

fetching water in drums when on the way, he met with accused Allah Rakhio, who was having 'Bharri' (bundle) of sugarcane, on which Imam Bux prevented him as to why he has cut his sugarcane, on which Allah Rakhio abused him and threatened him of dire consequences. Imam Bux remained silent and narrated the facts to the complainant who gave him consolation. It is further alleged in the FIR that on 29.07.1990 early in the morning, he along with his brother Imam Bux, Ramzan and nephew Inayatullah came to the lands of Imam Bux for planting sugarcane. The complainant was cutting sugarcane while other witnesses were cleaning the same. It is alleged that in the meanwhile Allah Rakhio accused came there and started eating the sugarcane and at about 10.30 a.m. he got up and started abusing Imam Bux which attracted the complainant and the P.Ws. The accused caused sharp sided hatchet blow to Imam Bux, who fell down and the complainant and PWs went towards accused but in the meantime accused caused second blow to Imam Bux on the left side of the neck. The accused then made his escape good and the complainant and PWs went near Imam Bux and found him dead. Thereafter complainant left the PWs over dead body and he himself proceeded to PS and lodged the FIR.

**3.** After observing all formalities, recording evidence of complainant Mohammad Umer, PWs Shamsuddin, Tapedar Ghulam Abbas, PW Inayatullah, mashir Abdul Rehman, I.O Rajab Ali and Medical Officer Dr. Bheemoon and recording statement of appellant, his defense witness namely Baid son of Qasim Bhatti, the learned trial Court convicted and sentenced the appellant / accused in the manner as stated above.

**4.** Learned counsel for the appellant / accused contended that notwithstanding there are major contradictions in the prosecution evidence, which dents the prosecution case; and as a result of which, the appellant is required to be acquitted of the charge; however, as per prosecution story the incident took place suddenly due to exchange of hot words between the parties when the complainant party was busy in planting the sugarcane

crop in the fields while the appellant was eating sugarcane, therefore, there appears no element of preplan or intention of the accused to commit the murder of deceased. Therefore, the punishment awarded to the accused is harsh, in fact, the learned trial Court ought to have awarded punishment under section 302 (c) PPC instead to R.I. for life in such circumstances. Learned counsel, therefore, prayed for conversion of the sentence under section 302 (c) PPC. Learned A.P.G. Sindh supported the impugned judgment, however, after going through the record has not opposed the contentions as advanced by learned counsel for the appellant / accused and raised no objection for conversion of the sentence from section 302 PPC to section 302 (c) PPC.

**5.** I have heard learned counsel for the parties and have minutely gone through the material available on record with their able assistance. It is obvious after perusal of the prosecution evidence adduced through ocular as well as medical that deceased expired by an unnatural death. Prosecution has also succeeded to establish its case that the appellant / accused has committed murder of deceased by causing hatchet blows. However, from prosecution evidence, it does not appear that the appellant / accused has committed murder of deceased intentionally with preplan. There appears that there was some altercation taken place between deceased over the eating of sugarcane with the appellant This fact is also substantiated from the evidence of PW Inayatullah, who in his examination-in-chief has deposed that ***“Deceased Imam Bux was my brother-in-law..... On 29.07.1990 I along with deceased Imam Bux, PW Shamsuddin, PW Ramzan and complainant Muhammad Umer had gone to the fields of deceased Imam Bux for plantation of sugarcane. We left our village at about 6-00 a.m. I, PW Ramzan and PW Shamsuddin and deceased Imam Bux were busy in cleaning the sugarcane. At about 7.15 a.m. accused Allah Rakhio armed with hatchet appeared there and sat behind deceased Imam Bux and started eating sugarcane. At about 10.30 a.m. accused Allah Rakhio after finishing eating sugarcane gave sharp side hatchet blow on left side of the neck of deceased Imam***

**Bux....Accused Allah Rakhio caused murder of deceased Imam Bux as deceased had prevented him from damaging his sugarcane crop.”** The defence witness namely Baid got examined by the appellant in his evidence has stated that in fact the murder of deceased was committed by the complainant; according to him, he found that complainant Umar along with deceased Imam Bux exchanged hot words on the plantation of sugarcane in the land. However, in my opinion, the entire prosecution evidence cannot be brushed aside, which is supported by medical version. In view of this position, it is crystal clear that the deceased was promptly murdered and nothing has come on record, which shows that the accused has committed the murder of deceased by preplanning intentionally. Consequently, I observe that the appellant 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 appellant 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]**.

**6.** 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.”*

**7.** The upshot of the above discussion the appeal is partly **allowed**, the conviction of the appellant for an offence under section 302 PPC is altered and converted into that for an offence under section 302 (c) PPC and consequently his sentence is reduced from Imprisonment for life including fine/compensation amount to R.I for ten years 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. shall be extended to the appellant.

**8.** It would be very essential to mention here that the Jail Roll of the appellant submitted by the Senior Superintendent

Officer Incharge, Central Prison Correctional Facility, Hyderabad at the direction of this Court, reflects that the appellant has served out 16 years and sixteen days of his sentence including remission, as such, after modification of impugned judgment, the appellant has completed his sentence, therefore, he is released. His bail bonds stand cancelled and surety stands discharged. Office is directed to return the surety papers to the surety after proper verification and identification.

**9.** This appeal is disposed of in the above terms along with pending applications.

**JUDGE**