

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

Criminal Appeal No.S-204 of 2006

Appellants: Taj Muhammad, Bandeh Ali, Bhooro and Azeem present on bail through Mr. Qazi Atif, Advocate.

Appellant Gul Hassan has already been released on 19.09.2009 on special remission granted by the President, Islamic Republic of Pakistan under article '45' of the Constitution of the Islamic Republic of Pakistan, 1973 on the eve of Eid-ul-Fiter 2009 as is evidence from the report dated 29.05.2017, submitted by the Superintendent, Central Prison, Hyderabad. Consequently, learned counsel for appellant Gul Hassan did not press instant appeal, as such, appeal was dismissed as not pressed to the extent of appellant Gul Hassan vide order dated 08.09.2022.

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

Date of hearing: **26.09.2022.**

Date of Judgment: **26.09.2022.**

J U D G M E N T

AMJAD ALI SAHITO, J. Being aggrieved and dissatisfied with the judgment dated 02.10.2006, passed by the learned IInd Additional Sessions Judge, Badin in Sessions Case No.40 of 2001 arising out of the FIR No.02/2001 for an offence under sections 302, 324, 147, 148, 149, 337-A (i), 337-F (i), 504 PPC registered at PS Talhar, whereby the appellants Gul Hassan and Taj Muhammad were convicted and sentenced to life imprisonment under section 302 (b) r/w section 34 PPC for murdering deceased Raja and pay fine of Rs.100,000.00 [Rupees one hundred thousand only]. In case of default in payment of fine amount to suffer six months more imprisonment. If the fine amount is realized, the same was ordered to be paid to the legal heirs of deceased. Appellants Bandeh Ali, Bhooro and Azeem were

convicted for the offence under section 324 r/w section 34 PPC and sentenced to suffer R.I. for seven years and pay fine of Rs.10,000.00 [Rupees ten thousand only]. In case of default in payment of fine amount, they shall further undergo R.I. for three months. They were further convicted and sentenced to suffer R.I. for five years under section 337-F (vi) PPC and to pay Daman of Rs.25,000.00 [Rupees twenty five thousand only]. If Daman is recovered, the same shall be paid to the victims/injured persons. However, the sentenced were ordered to run concurrently. The benefit of section 382-B Cr.P.C. was also extended to the appellants.

2. The brief facts of the prosecution case lodged by complainant Chhutto are that on 02.01.2001 at 10.00 p.m. complainant, his brothers Abdul Hakim alias Judge, Raja, Mujeeb and Sajjan a minor nephew of complainant came in village Rajo Khanani where on the complaint of said minor boy that he was maltreated by accused Azeem, some fight ensued between the parties and as a result whereof, accused Azeem issued threats to the complainant party for dire consequences. After finishing their business when the complainant party was proceeding towards their village when they reached on the side of Mir Lakhi watercourse, they were intercepted by accused Bhooro, Bandeh Ali, Muhammad Azeem, Gul Hassan and Taj Muhammad duly armed with hatchets. It is alleged that accused Gul Hassan and Taj Muhammad caused hatchet injuries to deceased Raja whereas accused Bandeh Ali, Bhooro and Azeem caused sharp side hatchet injuries to the complainant, his brother Abdul Hakim alias Judge and Mujeeb on which they raised cries attracting PW Jani and others. It is further alleged that during fight accused Gul Hassan and Taj Muhammad are alleged to have received injuries by their own associates.

3. After observing all formalities including recording of statements of complainant Mir Chhuto, PWs Abdul Hakeem, Jani, Mujeeb, mashir Ghulam Ali, Dr. Aijaz Ali, ASI Ali Akbar, I.O SIP Abdul Ghafoor Khaskheli and Medical Officer Dr. Abdul Khalique Memon as well as recording 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. In their statements, the accused claimed their innocence and false implication in the case. However, neither they examined themselves on oath nor led defense witnesses in disproof of the allegations levelled against them by the prosecution.

4. Learned counsel for the appellants/accused contended that the appellants have been implicated in the instant case falsely. He has contended that the complainant in his deposition has allegedly stated that accused were armed with hatchets and attacked upon them and caused them hatchet injuries; however, he specifically deposed that accused Gul Hassan had caused hatchet injuries to Raja (deceased) on his head and other parts of the body with sharp side of hatchet; accused Azim caused him hatchet injuries on his head; accused Gul Hassan also caused hatchet injuries to Raja (deceased), as such, he has not deposed as to whether appellant Taj Muhammad caused hatchet injuries to the deceased. He further contended that the complainant in his evidence has also specified that accused Bhooro, Bandeh Ali caused hatchet injuries to PW Muhammad Hakim and PW Mujeeb. Learned counsel has further contended that it is not clear from entire prosecution evidence that who had given fatal hatchet injury to the deceased though the complainant did not say causing of injuries to deceased on the part of appellant Taj Muhammad and only the PWs have stated that appellants Gul Hassan and Taj Muhammad caused hatchet injuries to deceased Raja. He has further contended that the offence was neither preplanned nor intentional as had it result of preplanning then the appellants Gul Hassan and Taj Muhammad could not have received admitted injuries at the hands of complainant party. Learned counsel has contended that the offence had taken place promptly as a result of quarrel between the parties, therefore, the sentence of life imprisonment awarded to the appellants is very harsh. Learned counsel, therefore, prayed for conversion of sentence

awarded to the appellant Taj Muhammad from section 302 (b) PPC to section 302 (c) PPC. He has pointed out that the appellant Gul Hassan, who was awarded punishment of life imprisonment has already been released from Jail on 19.09.2009 on special remission granted by the President of the Islamic Republic of Pakistan. He has further contended that so far the conviction and sentence awarded to rest of the appellants is concerned, they have already completed their sentences only there remained fine/Daman amount total Rs.105,000.00 [Rupees one hundred five thousand only] to be paid by the appellants; however, they are already to deposited the same with the Accountant of this Court.

5. On the other hand, learned D.P.G. Sindh has admitted that it is not clear as to whether who had caused fatal injury to the deceased Raja, which resulted his death. However, he has raised no objection for conversion of the sentence of the appellant Taj Muhammad from section 302 (b) PPC to section 302 (c) PPC.

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

7. Record reflects that incident took place between the parties, in which deceased Raja expired by his unnatural death by sustaining injuries on the right of head, extending from right parotid region to parietal vertex area of head, left occipital region extending to back of left ear and nearby, right fore-arm and left upper arm as per evidence of medical officer Dr. Abdul Khaliq Memon, who conducted the post mortem of the deceased. The medical officer Dr. Aijaz Ali has also certified the receipt of injuries to injured persons. Now question arises that in the FIR, complainant has involved the appellant Taj Muhammad along with Gul Hassan to have caused injuries on the person of deceased Raja; however, he himself did not assign specific role of appellant Taj Muhammad for causing injuries to the deceased as he deposed that ***“..I along with my brothers namely Raja, Muhammad Hakim alias Judge, Mujeeb and nephew Sajjan***

after exchanging hot words were returning to our village on donkey cart to our village, when we were in the way to our village and arrived at watercourse of Mir Lakhi where accused Gul Hassan, Taj Muhammad, Bandeh Ali, Bhooro and Azim were all armed with hatchets attacked upon us, and caused us hatchet injuries. Accused Gul Hassan had caused hatchet injuries to PW Raja (deceased) on his head and other parts of the body with sharp side of hatchet. Accused Bhooro, Bandeh Ali caused hatchet injuries to PW Muhammad Hakim and PW Mujeeb. Accused Azim caused me hatchet injuries on my head. Accused Gul Hassan also caused hatchet injuries to PW Raja (deceased). The motive disclosed in the prosecution evidence appears to be weak. During quarrel between the complainant and accused party, injuries were also received to the accused Gul Hassan and Bandeh Ali as is evident from memo of injuries exhibited at Ex:21 produced by PW mashir Ghulam Ali, according to which accused Gul Hassan received injury on his forehead while *Shahat* finger of accused Bandeh Ali was cut down. In such circumstances, it appears that the incident took place suddenly without preplan or intention of the accused but due to sudden quarrel between the parties. If they had intention or preplan to commit murder, they must had managed care and cautions to save themselves from infliction of any injury to them. In such circumstances, I am of the opinion that it is not clear as to who caused fatal injury to the deceased and 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 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].

8. 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.”

9. The appellant Gul Hassan, who was awarded punishment of life imprisonment, against whom role causing injuries upon deceased was specifically alleged by the prosecution, has already been released from Jail on 19.09.2009 on special remission granted by the President of the Islamic Republic of Pakistan.

10. The upshot of the above discussion the appeal is partly **allowed**, the conviction in respect of the appellant Taj Muhammad for an offence under section 302(b) PPC is converted into that for an offence under section 302 (c) PPC and consequently his sentence is reduced from Imprisonment for life to R.I for eighteen years and to pay Rs.100,000.00 [Rupees one hundred thousand only] as compensation under section 544-A Cr.P.C. In case, he failed to pay the compensation amount he shall further undergo R.I. for six months more. If the compensation amount is paid, the same be disbursed amongst the legal heirs of deceased Raja. The benefit of section 382-B Cr.P.C. shall be extended to the appellant Taj Muhammad.

11. The appellants namely Bandeh Ali, Bhooro and Azeem have already completed their sentences vide Jail Roll dated 26.09.2022 called by this Court from the Superintendent, Central Prison, Hyderabad and only there remains fine/Daman amount total Rs.105,000.00 [Rupees one hundred five thousand only] to be paid by them; which they have already deposited with the Accountant of this Court. Such report of the Accountant is also available in the case file. Accordingly, the appellants namely Bandeh Ali, Bhooro and Azeem are released. They are present on bail, their bail bonds stand cancelled and surety[-ies] discharged. The Accountant is directed to disburse the fine/Daman amongst the victims/injured persons in the manner as specified in the impugned judgment. The impugned judgment of conviction and sentence passed by the learned trial Court is modified accordingly.

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 appellant Taj Muhammad has served out eighteen years, seven months and eighteen days of his sentence including remission, as such, after modification of impugned judgment, the appellant has completed his sentence including the sentence to be suffered in case of non-payment of compensation amount. Consequently, the appellant Taj Muhammad, who is present on bail is hereby released. His bail bonds stand cancelled and surety discharged.

13. Office is directed to return the surety papers to all the surety[-ies] after proper verification and identification.

14. This appeal is disposed of in the above terms.

JUDGE