

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

Criminal Jail Appeal No.S-81 of 2002

Appellants: Abdullah alias Bhai and Khan Muhammad  
on bail through Mr. Imtiaz Ali Chanhio,  
Advocate.

Respondent: The State through Mr. Muhammad  
Noonari D.P.G. Sindh.

Date of hearing: **29.09.2022.**

Date of Judgment: **29.09.2022.**

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

**AMJAD ALI SAHITO, J.** Being aggrieved and dissatisfied with the judgment dated 13.07.2002, passed by the learned 1<sup>st</sup> Additional Sessions Judge, Nawabshah in Sessions Case No.118 of 1996 arising out of the FIR No.33/1996 for an offence under sections 302, 504, 34 PPC registered at PS B-Section, whereby the appellants were convicted under section 302 (c) PPC for murdering deceased Rajab Ali and sentenced to suffer Imprisonment for life and pay Rs.20,000.00 [Rupees twenty thousand only] to the heirs of deceased as compensation or in default whereof to suffer R.I. for a period of six months. However, the benefit of section 382-B Cr.P.C. was also extended to the appellants. Whereas, co-accused namely Jan Muhammad and Muhammad Mithal involved in the instant case were acquitted of the charge in the instant crime.

**2.** At the very outset, learned counsel for the appellant states that due to illness appellant / accused Khan Muhammad could not reach before this Court, as such, he seeks condonation. His absence is condoned. Appellant Abdullah alias Bhai is present on bail.

**3.** The brief facts of the prosecution case as depicted in the FIR lodged by complainant Allah Ditto on 26.02.1996 are that he is a business man and near to his house, his cousin Rajab Ali reside. Khan Muhammad son of Lal Muhammad Maganhar is his relative who married to Mst. Hayatan, sister of Rajab Ali but due to matrimonial affairs there was dispute between them, as such, Khan Muhamamd divorced Mst. Hayatan and took Rs.20,000/- as compensation from Rajab Ali side. Thereafter, Rajab Ali got his sister Mst. Hayatan remarried with Ashiq Junejo, which had annoyed Khan Muhammad and he used to threaten Rajab Ali to murder him. It is further alleged that on the day of incident he along with Rajab Ali went to Mariam road together and were standing at Ghasita hotel at 7.00 p.m. where accused Khan Muhammad and Abdullah armed with dagger and accused Muhammad Mithal and Jan Muhammad armed with canes came there and they abused Rajab Ali and Khan Muhammad had talked about re-marriage of Mst. Hayatan with Nawab Junejo and deceased had referred to the talaq whereupon accused Khan Muhammad and Abdullah caused dagger blows to Rajab Ali whereas Muhammad Mithal and Jan Muhammad gave him blows with canes. Complainant raised cries which attracted Karim Bux and Gul Bahar Maganhar, who intervened and the accused ran away towards east. The complainant found Rajab Ali injured and was bleeding and he died at the spot, hence, the complained lodged instant report.

**4.** After observing all formalities, recording evidence of prosecution witnesses, statements of accused in terms of section 342 Cr.P.C., the learned trial Court convicted and sentenced the appellants/accused in the manner as stated above and acquitted co-accused Abdullah and Jan Muhammad.

**5.** Learned counsel for the appellants/accused contended that despite the prosecution has failed to establish the case against the accused and the learned trial Court did not appreciate the fact of acquitting the co-accused Muhammad Mithal and Jan Muhammad on the same set of evidence, therefore, conviction and sentence to the present appellants is

not sustainable under the law. However, as the incident is taken place promptly and no preplan for committing murder of deceased has been established by the prosecution and the accused are being dragged in the instant case since 1996, as such, if the quantum of sentence i.e. imprisonment for life being unsympathetic is considered to lesser considering the pendency of case for the offence pertaining to the year 1996, he would have no objection. Learned D.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 appellants / accused.

**6.** I have heard learned counsel for the parties and have minutely gone through the material available on record with their able assistance. From perusal of the record, it is crystal clear that the deceased Rajab Ali was promptly murdered when allegedly appellant Abdullah and Khan Muhammad caused dagger blows to deceased. The prosecution has established its case through all modes of evidence which includes ocular, circumstantial as well as medical evidence. So far the acquittal of co-accused Muhammad Mithal and Jan Muhammad on the same set of evidence is concerned, suffice to say that the role attributed upon them is quite different to that of present appellants, as such, disbelief of ocular evidence in respect of some of the accused cannot lead for discarding the entire evidence; consequently, the present appellants cannot be exonerated from the charge with which they have been booked. However, in the entire evidence of prosecution, nothing has come on record, which shows that the accused have committed the murder of deceased by preplanning or intention. As such, I observe that the appellants had no intention to kill deceased as defined under part (a) of section 300 PPC, hence, the sentence i.e. imprisonment for life under section 302 (c) PPC is not justifiable. In fact, punishment with death or imprisonment for life as ta'zir is to be awarded under section 302 (b) PPC and punishment with imprisonment of either description for a term which may extend to twenty-five years is to be awarded under section 302 (c) PPC; however, in the instant case the learned trial

Court has awarded punishment with imprisonment for life. Consequently, keeping in view the said circumstances and the dragness of appellants since 1996 when the case fall under section 302 (c) PPC, the punishment is liable to be awarded in terms thereto. In this regard, I would like to refer 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]**.

7. 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.”*

**8.** The upshot of the above discussion is that the appeal is partly **allowed**, the conviction of the appellants under section 302 (c) PPC is reduced from imprisonment for life to ten years and to pay compensation of Rs.20,000/- (Rupees twenty thousand only) to the legal heirs of deceased as provided under section 544-A Cr.P.C. or in case of default whereof, to suffer S.I for six months more. 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 appellants.

**9.** It would be very essential to mention here that as per report dated 24.11.2008 submitted by the Superintendent Central Prison, Hyderabad, the appellants have served out their sentence 11 years and 08 months including remission, as such, after modification of impugned judgment, the appellants have completed their sentences including the sentence to be suffered in case of non-payment of compensation amount. Appellants are present on bail, therefore, they are released. Their bail bonds stand cancelled and surety[-ies] discharged. Office is directed to return the surety papers to the surety[-ies] after proper verification and identification.

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

**JUDGE**