

IN THE HIGH COURT SINDH BENCH AT SUKKUR
Criminal Jail Appeal No. S-123 of 2018

Appellant : Intiaz Ali s/o Muharram Ali Shaikh,
through Mr. Irshad Hussain Dharejo,
Advocate

Respondent : The State, through Mr. Aftab Ahmed Shar
Addl. P.G. Sindh

Date of Hearing : 20.02.2023
Date of Order : 20.02.2023

J U D G M E N T

ZAFAR AHMED RAJPUT-J:- Appellant Intiaz Ali was tried by the Addl. Sessions Judge-II, Khairpur in Sessions Case No.933 of 2015, arising out of Crime No.90/2015, registered at Police Station Ahmedpur for the offence under section 302, P.P.C. After a full-fledged trial, the learned Trial Court, vide its judgment dated 25.09.2018, convicted the appellant under section 302(b), P.P.C. and sentenced him to endure life imprisonment, with a direction to pay compensation of Rs. 50,000/- to the legal heirs of the deceased Shahid Hussain Shaikh; in default thereof, he shall undergo simple imprisonment for three months more. Benefit of section 382-B, Cr. P.C was extended to him. Aggrieved of his conviction and sentence, the appellant has preferred the instant criminal appeal.

2. Succinctly, the facts of the prosecution case, as narrated in the FIR, are that the appellant is the nephew of the complainant Manzoor Hussain Shaikh and he resided with him. On 27.08.2015, the appellant left the house early in the morning. At 1600 hours, the complainant and his son Shahid Hussain, 25, were standing at the out door of the house when appellant came there. Shahid Hussain asked him that he remained out whole day and took intoxicant; on that, the appellant got annoyed; he hit Shahid Hussain with a brick on his

head, who fell down to the ground and died, for that the appellant was booked in the FIR.

3. Learned counsel for the appellant at the very outset contends that the case of the appellant comes within the ambit of section 302 (c), P.P.C., as parties were not inimical to each other and there was no previous ill will between the deceased and the appellant/accused; hence, he does not intent to argue the appeal on merit but he seeks alteration of the conviction and sentence from section 302(b), P.P.C. to 302 (c), P.P.C. In support of his contentions, learned counsel has relied upon the case of *Sabtain Hyder v. The State* (2022 SCMR 2012), *Muhammad Ajmal v. The State* (2022 SCMR 88) and *Muhammad Qasim v. The State* (PLD 2018 SC 840).

4. Learned Addl. P.G. concedes that the alleged murder of the deceased is lacking intention and the same was outcome of sudden provocation.

5. Heard, record perused.

6. It has been observed in the case of *Muhammad Ajmal (supra)* as under:

“3---- An offence under section 302 (c), P.P.C. will be attracted only in those cases, where exceptions to old provisions of section 300, P.P.C. stand attracted. Exception 4 of old section 300, P.P.C. is reproduced as under:-

“Exception 4:- Culpable Homicides is not murder if it is committed without premeditation in in sudden fight in the heat of passion upon a sudden quarrel and without the offender’s having taken undue advantage or acted in a cruel or unusual manner.

Explanation: it is immaterial in such cases which party offers the provocation or commits the first assault.”

So bringing the case under the above exception (culpable homicide not amounting to murder), it is required to be established that the case was one of sudden fight, taken place without any

premeditation in the heat of passion upon a sudden quarrel and offender had not taken any undue advantage and must has not acted in a cruel or unusual manner.

4. In the case of *Ali Muhammad v. Ali Muhammad and another* (PLD 1996 SC 274) it was held that there should be no doubt that the cases covered by the exceptions to the old section 300, P.P.C. read with the old section 304, therefore, are cases which were intended to be dealt under clause (c) of the new section 302 of the P.P.C. Likewise in the case of *Azmat Ullah v. The State* (2014 SCMR 1178) it was held that:

“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 contains 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 develop upon a sudden quarrel and no undue advantage was 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 provision of section 302 (c), P.P.C.”

The new section 302 itself divides qatl-i-amd for the purpose of punishment into three categories i.e.

- a) qatl-i-amd, punished with death as qisas;
- b) qatl-i-amd, punished with death or imprisonment for life as ta'zir;
- c) qatl-i-amd, punished with imprisonment of either description for a term, which may extended to twenty-five years, where according to the injunction of Islam the punishment of qisas is not applicable.”

7. In the case in hand, admittedly, the deceased and the appellant were not inimical to each other and there was no previous ill will between them. The facts narrated in the FIR *per se* suggest that at the spur of moment, altercation took place between the deceased and the appellant; the latter picked a brick lying on the ground and threw it on the deceased, which hit on his head and he died on the spot. The evidence of the prosecution witnesses is on the same line, which also indicates that there was no premeditation and at the spur of the moment, the appellant hit the deceased with a brick. The appellant did not act in cruel or unusual manner. As such, all the ingredients of above-mentioned Exception 4 are borne out from the prosecution case rendering the same to be fallen under section 302(c), P.P.C. and not under section 302 (b), P.P.C. Consequently, this criminal appeal is partly allowed. The conviction of the appellant is converted from section 302 (b), P.P.C. to section 302(c), P.P.C. and his sentence is reduced to twelve years' R.I. The compensation and sentence in default thereof awarded by the Trial Court as well as benefit of section 382-B, Cr.P.C. shall remain intact.

8. Criminal Jail Appeal stands disposed of in the above terms.

JUDGE

Ahmed