

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

Criminal Appeal No.S-08 of 2016

Appellant: Muhammad Mithan through Mrs. Razia Ali Zaman Patoli, Advocate.

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

Date of hearing: **09.05.2023.**

Date of Judgment: **09.05.2023.**

J U D G M E N T

AMJAD ALI SAHITO, J. Being aggrieved and dissatisfied with the judgment dated 21.12.2015, passed by the learned Sessions Judge, Tando Muhammad Khan in Sessions Case No.13 of 2012 arising out of the FIR No.73/2012 for an offence under section 302 PPC registered at PS Tando Ghulam Hyder, whereby the appellant was convicted under section 302 (b) PPC for murdering deceased Muhammad Umar and sentenced to suffer Imprisonment for life and pay fine of Rs.100,000.00 [Rupees one hundred thousand only], as compensation to be paid to the legal heirs of deceased Muhammad Umar. In case of default in payment of fine amount, two years more imprisonment. However, the benefit of section 382-B Cr.P.C. was also extended to the appellant.

2. The brief facts of the prosecution case are that complainant is Zamindar by profession. Muhammad Mithan Chandio is their close relative and their houses are situated adjacent to each other and are in one and same hedge. Muhammad Mithan used to maltreat his wife. On 01.08.2012, at night hours, complainant and others were present in their house

at about 11:30 p.m. Muhammad Mithan was maltreating his wife, on which Muhammad Umer went to the house of Muhammad Mithan, and inquired from him as to why he was maltreating his wife, on which Muhammad Mithan made straight fire from his pistol at Muhammad Umer with intend to commit his Qatl-i-Amd which hit him at his neck in presence of complainant, Luqman s/o Punhoon Chandio and Nek Muhammad (brother of complainant). Muhammad Mithan also caused hatchet blow injury at left side shoulder of Muhammad Umer, on which complainant and others gave hackles to Muhammad Mithan but he succeeded to escape away along with hatchet and pistol. Then complainant and others arranged vehicle and brought Muhammad Umer at PS Tando Ghulam Hyder, wherefrom they obtained letter for treatment and proceeded towards Civil Hospital, Tando Muhammad Khan. Muhammad Umer succumbed to the injuries on the way near Matli. Then complainant and others brought deceased Muhammad Umer to Taluka Hospital, Tando Muhammad Khan and after conducting the post-mortem of deceased Muhammad Umer, they took the dead body of deceased Muhammad to their village, where they observed funeral ceremony and then lodged present F.I.R.

3. After observing all formalities including recording of statements of complainant Niaz Muhammad Chandio, Nek Muhammad Chandio, Dr. Maqbool Ahmed Mallah, mashir Uris Chandio, I.O of the case SIP Rehan Shah and Tapedar Pir Bux Mangsi as well as statement of accused under section 342 Cr.P.C., 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 as per prosecution version, appellant was maltreating his wife, on which Muhammad Umer went to his house and on inquiry as to why he was maltreating his wife, on which Muhammad Mithan made straight fire from his pistol at Muhammad Umer with intent to commit his Qatl-i-Amd, who subsequently succumbed to the injuries. She further contended

that from the prosecution version as well as evidence brought on record, it is crystal clear that the incident was not preplanned but it took place all of sudden. Learned counsel, therefore, prayed for conversion of sentence from section 302 (b) PPC to section 302 (c) PPC.

5. On the other hand, learned A.P.G. Sindh raised no objection for conversion of the sentence from section 302 (b) PPC to section 302 (c) PPC on the ground that there is possibility that the murder of deceased could be in the grave and sudden provocation.

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

7. On perusal of prosecution evidence, it reflects none of the witnesses have deposed that the murder committed with premeditation or preplanning. During statement of the appellant recorded under section 342 Cr.P.C. he led defense evidence of his wife Mst. Marvi. From the perusal of her evidence, there appears divergent story and I want to reproduce relevant portion of the examination-in-chief of defense witness Mst. Marvi as under:-

“About three years ago this incident took place. At that time we were sleeping in courtyard of our house. One Umer came there and got woke up me for committing zina. My husband woke up and grappled with said Umer. They also fight with each other Umerraised cries, which attracted to Niaz, Naik Muhammad and Uris. Out of them Niaz was armed with pistol. Niaz fired with pistol at my husband, who saved himself and said fire hit Umer at his neck. Nek Muhamamd having hatchet in his hand and tried to cause hatchet injury to my husband but caused injuries to deceased Umer. Thereafter my husband got released himself and went away from there. Uris also caused injury to me at my right forearm. They caused eight-ten injuries to me. After receiving injuries I went unconscious. I do not know, who shifted me to Hyderabad hospital for treatment and report.”

8. Scanning of prosecution evidence leads me to an inescapable conclusion that the case in hand was indeed a case

of grave and sudden provocation which attracts the provisions of section 302 (c) P.P.C. as declared by the Hon'ble Supreme Court in the case of **"Zahid Rehman v. The State" (PLD 2015 SC 77)**. The learned Assistant Prosecutor General, Sindh appearing for the State has, however, pointed out that there is possibility that the murder of deceased could be in the grave and sudden provocation, in terms of the first proviso to section 302 (c), P.P.C. and, thus, it was to be treated as a case attracting to the provision of section 302(c), P.P.C. I have also gone to this aspect of the matter with care and have found that the words "in the name or on the pretext of honour" used in the first proviso to section 302(c), P.P.C. are not without any significance or meaning. The said words indicate that a murder committed "in the name or on the pretext of honour" has to be a calculated murder committed with premeditation in the background of honour whereas the words used in the context of grave and sudden provocation in Exception 1 to the erstwhile Section 300, P.P.C. were "deprived of the power of self-control". Such words used in Exception I to the erstwhile section 300, P.P.C. catered for a situation which was not premeditated and had developed suddenly leading to grave provocation depriving a person of the power of self-control. Such different phraseology used by the legislature in these distinct provisions clearly indicates catering for different situations and, therefore, the words "in the name or on the pretext of honour" ought not to be mixed or confused with grave and sudden provocation leading to depriving of the Power of self-control. This distinction between honour and grave and sudden provocation was clearly recognized by the Hon'ble Supreme Court in the case of **"Muhammad Ameer v. The State" (PLD 2006 SC 283)** and the same is obviously attracted to the facts of the present case as well. Therefore, I found that instant case was a case of grave and sudden provocation and honour only provided a backdrop to the same. Therefore, 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].

9. 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.”

10. The upshot of the above discussion the appeal is partly **allowed**, the conviction of the appellant 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 twenty years. However, the appellant is directed to make payment of Rs.100,000.00 [rupees one hundred thousand only] as compensation provided under section 544-A Cr.P.C. to be distributed amongst the legal heirs of deceased, and in case of failure, he shall further serve six months simple imprisonment. If the said compensation amount is recovered, the same be disbursed amongst the legal heirs of deceased. 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.

11. 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 twenty years, nine months and sixteen days of his sentence including remission, as such, after modification of impugned judgment, the appellant has completed his sentence including sentence in lieu of compensation amount. Consequently, appellant is ordered to be released forthwith, if he is not required in any other custody case.

12. With above modification, instant appeal stands disposed of along with pending application.

JUDGE