JUDGMENT SHEET
IN THE HIGH COURT OF SINDH AT KARACHI.

CRIMINAL APPEAL NO. 49 OF 1997
CRIMINAL JAIL APPEAL NO. 64 OF 1997

JUDGMENT

DATE OF HEARING: 11.3.2003.

APPELLANT: Yaroo and another through Mr. Muhammad Yousif Leghari, Advocate.

RESPONDENT: The State through Mr. Ansar H.Ansari, Advocate.

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MUHAMMAD SADIQ LEGHARI, J. **Appellants Yaroo and Faizo, Gurgaij alongwith three others were tried for the offences under Sections 302, 324, 323, 147, 148, 149 PPC and awarded imprisonment for life under Section 302 PPC by the First Additional Sessions Judge Mirpurkhas. Allegation against them was that they being armed with Lathies and their co-accused Mir, Bachayo and Kamani equipped with hatchets, caused injuries to Mst. Nabila, her brother Ghulam Qadir and their mother Mst. Jannat in the result whereof Nabila died in the hospital.**

The prosecution case is that Mst. Sahib Khatoon the daughter of Akber and her husband accused Mir were residing in her parents house. Her husband Mir asked her to go and reside with him in his house but she declined. It is said that on 27.5.1988 Mir together with Bachayo , Kamani, Yaroo and Faizoo all equipped with hatchets and Lathies entered the house of Akber the father of Sahiba Khatoon at about 8:00 P.M. and dragged her for taking her forcibly to the house of her husband Mir. Her mother Mst. Jannat, sister Nabila and brother Ghulam Qadir intervened

whereupon Yaroo and Faizoo delivered Lathi blows to Nabila, and the remaining inflicted blunt sided hatchet blows upon Ghulam Qadir and Mst. Jannat. At that time Akber who was irrigating the crops outside the house was attracted by the cries of the injured. He entered the house and P.W. Allah Dino also came there on cries. After their arrival the culprits decamped. All the three injured were removed to Hospital and FIR was lodged by Akber with Jhudo Police. Injured Nabila succumbed to the injuries after two days in the hospital.

After investigation all the five accused were sent for trial. Accused Meer expired during pendency of the case. The learned First Additional Sessions Judge Mirpurkhas to whom the case was assigned for trial convicted Yaroo and Faizoo the appellant for offence under Section 302 PPC. Sentence of imprisonment for life was awarded to them with direction to pay Rs.1.00,000/- each to the legal heirs of Nabila. Bachaya and Kamani were, however, convicted for offence under section 323 PPC and awarded sentence till rising of the Court with fine of Rs.10,000/= 50% of the fine, if recovered was to be paid to injured Ghulam Qadir. In default of payment of fine they were to suffer one month SI.

Only the appellants Yaroo and Faizoo have challenged the conviction and sentence through above mentioned two appeals. Although the appellant's leaned Advocate started his argument on the appreciation of evidence but immediately switched over to the legality of conviction for offence under Section 302 PPC and the quantum of the sentence stating that he wants to attack the judgment on those legal aspects only. He contended that the witnesses alleged that the appellant had given Lathi blows to deceased Nabila without giving number of the blows inflicted by

each of them and the medical evidence confirms the presence of only two injuries on the person of Nabila. In these circumstances the worst case of appellants can be that one Lathi blow is deemed to have been given by each of them. Then also it is difficult as to which of the appellants caused the head injury which, according to medical evidence proved to be fatal . Therefore both of the appellants could not be convicted for committing murder of Nabila. The learned Advocate further contended that in view of the fact that single Lathi blow was given by each of the appellants and they had no intention to kill deceased Nabila. Only they may be knowing that the blows could result in the death of the lady therefore they could, at the most, be convicted for an offence under Section 304 Part-II PPC for which the maximum imprisonment can be 10 years only or fine or both. He stated that the present incident had happened before enforcement of Criminal Law (Amendment) Ordinance 1991 therefore punishment will be under Section 304 PPC.

First of all the question of joint responsibility is to be considered. In view of the facts and circumstances that five armed persons went in the house of Complainant for taking Sahib Khatoon with them, Section 149 CPC was applicable. Although the learned trial Court had applied it in the charge read over to the accused but did not apply it at the time of awarding the conviction. The other set of two accused namely Bachayo and Kamani was not punished for murder of Nabila. They were convicted for causing blows to Ghulam Qadir P.W. Since the judgment in respect of these two accused has not been challenged therefore that aspect of the matter is not to be considered. However the appellants were held jointly responsible for murder of Nabila without mentioning Section 149 therefore their

conviction can not be treated illegal on that scores. But for, the fact that each one of the appellants delivered single blow to the deceased and fatal blow received by her was only one, it can safely be said that they (appellants) had no intention to kill her. However knowledge that the injuries could result in death can be attributed to them. Therefore they are liable to punishment for offence of culpable homicide not amounting to murder punishable under Section 304 Part-II.

In the result of above conclusion the judgment impugned through this appeal is modified to the extent that the appellants are convicted for offence under Section 304 Part-II and awarded sentence of seven years with fine of Rs.20,000/- each, in default whereof to suffer six months R.I. further. The amount of fine, if recovered, be paid to the legal heirs of Nabila the deceased. Benefit of Section 382(B) is allowed to them. With this modification the impugned judgment is maintained and appeal dismissed.

JUDGE