

IN THE HIGH COURT OF SINDH, AT KARACHI

Criminal Jail Appeal No. 888 of 2019

Appellant: Muhammad Taqi through Mr. Mamoon A.K Sherwany, advocate

The State: Mr. Khadim Hussain, Additional Prosecutor General Sindh

Date of hearing: 16.08.2023

Date of judgment: 16.08.2023

J U D G M E N T

IRSHAD ALI SHAH, J- The appellant is alleged to have committed murder of Zaheer Abbas by causing him fire shot injury, for that he was booked and reported upon by the police. On conclusion of trial, he was convicted under Section 302(b) PPC and sentenced to undergo life imprisonment and pay compensation of Rs.500,000/- to the legal heirs of the deceased and in default whereof to undergo simple imprisonment for 06 months with benefit of section 382(b) Cr.P.C by learned 1st -Additional Sessions Judge, (MCTC) Karachi South, vide judgment dated 22.11.2019, which is impugned by the appellant before this Court by preferring the instant CrI. Jail Appeal.

2. At the very outset, it is stated by the learned counsel for the appellant that the incident has taken place as a result of sudden flare up with no motive or ill-will; the appellant inclusive of remission has already undergone more than 18 years of the sentence therefore, under instructions, he would not press the disposal of instant Criminal Jail Appeal before this Court on merits, provided the sentence awarded to the appellant is reduced to one which he has already undergone by modifying the penal section, which is not opposed by learned Addl. P.G for the State.

3. Heard arguments and perused the record.

4. Admittedly, the appellant and deceased were security guards and none excepting PW Muhammad Adnan has seen the appellant committing the alleged incident. It was stated by PW Muhammad Adnan that on exchange of harsh words, the appellant fired at the deceased. His evidence prima facie suggests that there was no motive of the incident, which occurred on account of sudden flare up which constitutes an offence punishable u/s 302(c) PPC, therefore, the conviction awarded to the appellant for offence punishable u/s 302(b) PPC is modified with one u/s 302(c) PPC, consequently, he is sentenced to undergo rigorous imprisonment for 14 years and to pay compensation of Rs.100,000/- to the legal heirs of the deceased and in default whereof would undergo simple imprisonment for 01 month with benefit of section 382(b) Cr.P.C.

5. In the case of *Fayyaz Ahmed and others vs. Muhammad Khan and others (2020 SCMR 281)*, it has been held by the Apex Court that;

“4. The facts and circumstances of the case clearly demonstrate that the encounter between the parties was a chance and sudden encounter and there was no premeditation involved in this case. In this sudden occurrence only one blow was given by Rozi Khan appellant to Safdar Ali deceased and despite an opportunity being available in that regard he had not repeated that blow. In the heat of passion at the spot no undue advantage had been taken by the appellants and they had not acted in any manner which could be termed as cruel or unusual. For all these reasons we have concluded that the actions attributed to the appellants attracted the provisions of section 302(c), P.P.C. With this conclusion we hold that the trial court was quite justified in convicting and sentencing Fayyaz Ahmed appellant for an offence under section 302(c), P.P.C. and the conviction and sentence of Rozi Khan appellant for an offence under section 302(b), P.P.C. were unjustified.”

6. The instant criminal jail appeal is disposed of subject to above modification.

JUDGE