

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

Cr. Jail Appeal No.S-361 of 2011
Cr. Jail Appeal No.S-363 of 2011

Date of hearing : 16.12.2022
Date of Judgment : 16.12.2022

Appellants Ghulam : Through Mr. Badar Rajpar,
Muhammad and Advocate
Muhammad Moosa

The State : Through Mr. Abdul Waheed
Bijarani, Assistant P.G Sindh

Complainant : None present.
Moula Bux

J U D G M E N T

Muhammad Saleem Jessar. J.- By this single judgment, I propose to dispose of above said two Criminal Jail Appeals as the course of both appeals is same arising out of two different crimes viz. Crime No.138 & 149 of 2006 registered at P.S Kotri.

2. Through these appeals, appellants have assailed judgment dated 17.11.2011 passed by learned Sessions Judge, Jamshoro, in Sessions Case Nos.89 & 204 of 2011, arising out of F.I.R Nos.138 & 149 of 2006 respectively, registered at P.S Kotri, whereby they have been convicted and sentenced to suffer imprisonment for life as Ta'zir and to pay compensation of Rs.100,000/- each to the legal heirs of deceased Rajib Ali. Both appellants were also convicted for offences under Sections 337-F(iii) & 337-F(v) PPC and sentenced to suffer R.I for one year and to pay Daman of Rs.10,000/- each for each offence to injured PW Abdul Razzak. Besides appellant Ghulam Muhammad was convicted for offence under Section 13-E, of Arms Ordinance, 1965 and was sentenced to suffer R.I for 07 years. However, the sentences awarded to appellants were directed to run concurrently by this Court vide order dated 08.12.2022 with benefit of Section 382-B Cr.P.C.

3. The crux of the prosecution case is that on 20.11.2006 at 1445 hours, one Moula Bux son of Deen Muhammad appeared at Police Station, Kotri and lodged report of an incident of murder of his nephew Rajib Ali and causing injuries to Abdul Razzak by accused Ghulam Muhammad and Muhammad Moosa. The complainant further alleged that he was working as Peon in a private school at Kotri and on the day of incident his nephew Rajib Ali was cutting branches of Babul (local accacia) Tree, on which accused Ghulam Muhammad, armed with DBBL gun, Muhammad Moosa, armed with country made pistol of 12-bore and Mushtaque armed with lathi appeared at the scene and asked as to why Rajib Ali was cutting branches of the tree as said tree was in their possession. Some hot words were exchanged between complainant and accused persons and thereafter Rajib alighted from the tree. Then at about 2-00 p.m. the accused came to the house of one Allah Bachayo where accused Ghulam Muhammad fired from his weapon straightly upon Rajib Ali, which hit him on his chest, who fell down. Accused Muhammad Moosa also fired straightly from his weapon upon Abdul Razzak, which hit on his left leg and he fell down. The complainant party shifted the injured to Taluka Hospital, Kotri, where Rajib Ali died. Hence, instant F.I.R was lodged.

4. After registration of the case, investigation was carried out by the concerned I.O, who after completion of legal formalities, submitted challan before the Court of law having jurisdiction, where a formal charge was framed against all three accused at Ex-3, to which they pleaded not guilty and claimed their trial vide their pleas at Ex-4 to 6.

5. In order to establish the charge, the prosecution examined as many as 05(five) witnesses namely Moula Bux (complainant), Abdul Razzak, ASI Ali Ahmed, Shoukat Ali and Dr. Saifal Malook, who produced various documents in the shape of F.I.R, memos, inquest as well postmortem reports etc. Thereafter, prosecution side was closed vide his statement at Ex-17.

6. Thereafter, statements of the accused under Section 342 Cr.P.C were recorded at Ex.18 to 20, wherein they denied the allegations leveled by the prosecution and prayed for justice. The accused neither examined themselves on oath as provided under Section 340(2) Cr.P.C nor led any evidence in their defense in disproof of the charge.

7. After formulating the points for determination, recording evidence of the prosecution witnesses and hearing learned Counsel for the parties, trial Court vide impugned judgment convicted and sentenced appellants Ghulam Muhammad and Muhammad Moosa in the terms as stated above while co-accused Mushtaque was acquitted of the charge; hence, these appeals have been preferred by appellants/convicts.

8. Learned Counsel for appellants at the very outset submits that appellant Ghulam Muhammad, who was attributed role of causing death of deceased Rajib Ali, has been awarded the sentence of rigorous imprisonment for life which sentence he has already served out; therefore, he may be released from jail. He next submits that role of appellant Muhammad Moosa is that he allegedly fired from his pistol which hit on left leg of injured Abdul Razzak and the injury on leg was not detrimental to his life. He next submits that there was no intention of the appellant to commit Qatl-e-Amd of injured but the incident took place on account of exchanging hot words between accused and complainant party. He next submits that appellant Muhammad Moosa has served out his sentence more than 11 years; besides has got remission; hence, pray for conversion of his sentence from Section 302(b) to Section 302(c) PPC. He lastly submits that as far as Daman amount of Rs.20,000/- against each appellant is concerned, the appellants have agreed to deposit the same before their release from jail.

9. Learned A.P.G. Sindh has supported the impugned judgment; however, has not opposed the proposal as advanced by learned Counsel to the extent of appellant Muhammad Moosa and raised no objection for conversion of the sentence from Section 302(b)

PPC to Section 302 (c) PPC; however, subject to payment of Daman to injured which as per law cannot be waived off.

10. Heard and perused the record.

11. After perusal of evidence adduced by the prosecution, it has transpired that deceased had died by an un-natural death. The prosecution has also succeeded in establishing its case that appellant Ghulam Muhammad has committed murder of deceased Rajib Ali by firing from his gun. From evidence, it has also transpired that prior to this incident deceased Rajib Ali, the nephew of complainant, had cut wings/branches of babul tree on which accused party became annoyed and thereby caused death of deceased as well injuries to injured PW Abdul Razzak. The prosecution has succeeded in proving its case from all corners and both appellants have been sentenced to life imprisonment maximum; besides appellant Ghulam Muhammad has been sentenced to seven years for offence under Section 13-E, of Arms Ordinance, 1965. The jail roll of both appellants has been received. As per jail roll dated 15.12.2022 appellant Ghulam Muhammad has served out his sentence viz. 20 years 03 months and 12 days and has earned remissions of 13 years and 18 days; however, he is in jail only for want of Daman amount of Rs.20,000/- for which learned Counsel for appellant(s) undertakes that said Daman amount will be deposited. So far as the case against appellant Muhammad Moosa is concerned, the role against him is that he allegedly fired from his pistol upon injured Abdul Razzak which hit him on his left leg; however, the injury sustained by injured was not declared by the M.L.O to be fatal to his life; therefore, the request so made by learned Counsel for appellant Muhammad Moosa that his sentence for offence under Section 302(b) PPC may be converted to an offence under Section 302(c) PPC, is considerable to be acceded to particularly when learned A.P.G after going through the record has extended no objection to the extent of appellant Muhammad Moosa; however, learned A.P.G has submitted that both appellants may be directed to deposit Daman amount as it cannot be waived off.

12. The upshot of the above discussion is that the Criminal Jail Appeal No.S-363 of 2011 is dismissed to the extent of appellant Ghulam Muhammad; whereas it is hereby partly allowed to the extent of appellant Muhammad Moosa. His conviction for an offence under Section 302(b) PPC is altered / converted into an offence under Section 302(c) PPC; consequently his sentence is modified and reduced from imprisonment of life to one already undergone by him. The impugned judgment of conviction and sentences passed by learned Sessions Judge, Jamshoro (Trial Court), vide Sessions Case No.89 of 2006, arising out of Crime No.138 of 2006 of P.S Kotri under Sections 302, 324, 504, 337-F(v), 337-F(iii) PPC is modified accordingly to the extent of appellant Muhammad Moosa; however, is hereby maintained to the extent of appellant Ghulam Muhammad. As far as the judgment dated 17.11.2011 vide Sessions Case No.204 of 2011 arising out of Crime No.149 of 2006 of P.S Kotri under Section 13-E, of Arms Ordinance, 1965 is concerned, the same is hereby dismissed as the appellant Ghulam Muhammad has already served out his entire sentence to the extent of seven years imprisonment. Consequently, both appellants shall be released forthwith if they are no more required in any other custody case; however, their release shall be subject to payment of Daman amount of Rs.20,000/- each in favour of injured namely Abdul Razzak with the Additional Registrar of this Court. In case, the Daman amount is deposited by the appellants, the same shall be paid to the injured after proper verification.

13. These Criminal Appeals are disposed of in above terms alongwith pending application(s).

JUDGE

Shahid