

**Judgment sheet
IN THE HIGH COURT OF SINDH, CIRCUIT
COURT, HYDERABAD**

Criminal Jail Appeal No.S-294 of 2012

Appellant : Allah Dino s/o Hashim Notiar through
Mr. Omparkash H. Karmani advocate.

Complainant : Nemo.

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

Date of hearing : **11.09.2023.**
Date of announcement: **18.09.2023.**

JUDGMENT

ZULFIQAR ALI SANGI, J: Through instant appeal, the present appellant has assailed the judgment dated 26.09.2012, passed by learned Additional Sessions Judge, Tharparkar @ Mithi in Sessions Case No.42 of 2011 (re-State Vs. Allahdino and another) arising out of FIR No.41 of 2011 for offences under sections 302 and 34 P.P.C, registered with P.S Diplo, whereby he has been convicted and sentenced to suffer imprisonment for life for committing an offence under section 302 (b) PPC and to pay Diyat to the legal heirs of deceased. However, the benefit of section 382 (b) Cr.P.C. was extended to the appellant/accused, whereas learned trial Court acquitted the co-accused Ali Gul u/s 265-H(ii), Cr.P.C.

2. Brief facts of the prosecution case are that on 22.06.2011 at about 10.00 a.m, at a distance of ½ km from eastern side of village Belo Notiar, appellant along with Haji (let of accused) and Ali in furtherance of their common intention duly armed with hatchets were started cutting the Devi trees in front of the house of Ali Akbar, on which, he restrained them, whereupon accused Allahdino became annoyed and he caused sharp side of hatchet on the backside of head to Ali Akbar with intention to kill him, but he sustained injuries and raised cries and fell down, while rest accused maltreated him with kicks and fists blows, upon which, PWs Rabdino and Muhamamd Yousuf came there running, on seeing them, accused persons went away towards

their houses. They brought the injured to his house and informed his father Muhammad Ishaque(complainant) on telephone, thereafter they took the injured Ali Akbar on account of grievous injury to PS Khoski as the Diplo was at a far distance, from where they obtained letter and admitted in injured in RHC, Khoski, thereafter injured was referred to LMC, Hyderabad where he was admitted for treatment, but on 28.06.2011 he succumbed to the injuries. Such FIR was lodged against above named accused.

3. After registration of FIR and on completion of investigation challan was submitted against the accused persons. After completing legal formalities, a formal charge was framed against them, to which, they pleaded not guilty and claimed their trial.

4. The prosecution in order to prove its case examined as many as 17 witnesses, who produced certain items and documents in support of their statements. Thereafter learned ADPP closed the prosecution side. The trial Court recorded statements of the accused under section 342 Cr.P.C, wherein they denied the allegations of the prosecution and further stated that they are innocent and have falsely been implicated in this case. Accused Allahdino further stated that report of chemical examiner has been arranged in respect of blood stained earch and hatchet as hatchet has been foisted upon him and PWs have deposed against him as they are interested witnesses. He further stated that complainant implicated him in this case due to enmity between them over land and complainant had also lodged an FIR No.39/2010 at PS Badin regarding dispute over land, in which, he was one of the accused. He further stated that complainant in collusion with Khoski Police implicated him in this case, otherwise he did not know whether deceased received injuires and there is no strong evidence against him. He produced such FIR. Accused did not lead any evidence in defence and declined to examine himself on oath unders section 340(2) Cr.P.C in disproof of the prosecution allegations.

5. After the assessment of evidence, the learned Trial Court

passed the impugned judgment and awarded sentence to the present appellant/accused as mentioned above. Being aggrieved and dissatisfied with the said judgment, this appellant/accused has preferred the instant appeal.

6. At the very outset, learned counsel for the appellant submits that he does not wish to contest this appeal on merits if this Court while maintaining the conviction of the appellant reduces the same to one he has already undergone by making an offence converting from section 302(b) to 302(c), PPC on the ground that only one injury caused by appellant to the deceased and he has not repeated the same, therefore, his intention was not for causing murder to him, however, the deceased was died due to the said injuries.

7. On the other hand, learned Assistant Prosecutor General Sindh though supported the impugned judgment but has stated that she has no objection if a lenient view is taken against the appellant by dismissing his appeal on merits and modifying the sentence to one as already undergone.

8. I have heard learned counsel for the appellant and learned Assistant Prosecutor General and have also gone through the material available on record with their able assistance.

9. After reappraisal of evidence, it reflects that prosecution witnesses have fully supported the case of prosecution and no major contradiction is found in their evidence. During cross examination, no doubt has been created in the prosecution evidence, therefore, their evidence are reliable, straightforward and confidence-inspiring. The medical evidence available on the record is in line with the ocular account, which is fully corroborated with each other so far as the nature, locale, time and impact of the injuries on the person of the deceased is concerned. Learned counsel for the appellant could not point out any reason as to why the complainant has falsely involved the appellant in the present case and let off the real culprit. Substitution in such like cases is a rare phenomenon. During the course of proceedings, the learned counsel contended that there were material discrepancies and contradictions in the

statements of the eyewitnesses but in my specific query, he remained unsuccessful and could not point out any major contradiction, which could shatter the case of the prosecution. On account of a lapse of memory owing to the intervening period, some minor discrepancies are inevitable and they may occur naturally. The accused cannot claim the benefit of such minor discrepancies as the eye-witnesses and other witnesses have given details of the occurrence, which prove that they have witnessed the tragic death of Ali Akbar.

10. As requested by learned counsel for the appellant that he does not wish to contest this jail appeal on merits by pointing out appellant is behind the bars, as such, during the pendency of this appeal, his Jail Roll was called from the concerned jail authority, which shows that appellant has served sentence excluding remission of 12 years, 02 months and 02 days and has earned remission of 10 years, 11 months and 22 days, **hence he has served total sentence of almost 23 years, one month and 24 days.** However, the portion of the sentence now remains only 01 years, 10 months and 06 days.

11. While considering the request of learned counsel for the appellant, it is stated that admittedly no previous ill-will or enmity is pleaded in the instant case and the prosecution story is that the accused were restrained from cutting Devi trees, who annoyed and caused hatchet injuries to the deceased at that moment and later on he died in the hospital, as such, there appears no intention of the accused to commit the murder of deceased. Moreso, the accused has not repeated hatchet blows to the deceased, which also strengthen the version that the appellant having no intention to kill the deceased. At first instance the deceased was alive and thereafter about six days, during the treatment he was died. In the given facts and circumstances of the case as well as in view of no objection recorded by learned APG, the sentence of appellant is altered from section 302(b), P.P.C. to section 302(c), P.P.C. Record shows that he remained in jail almost to 23 years, hence the sentence already undergone by him would be sufficient to meet

the ends of justice. Reliance is placed on the case of ZESHAN @ SHANI v. THE STATE (PLD 2017 SC 165). Resultantly, while maintaining the conviction of appellant Allahdino under section 302(c), P.P.C, this appeal is dismissed to its extent. However, the quantum of the sentence is reduced to the period already served out by him. Presently, the appellant is in custody. He shall be released forthwith if he is not required in any other custody case.

12. It is made clear that in the impugned judgment, learned trial Court has awarded conviction in terms of section 302(b), PPC to suffer imprisonment for life as well as Diyat payable to the legal heirs of the deceased. It is worthwhile to mention here that the clause (b) of Section 302, PPC only provides punishment with death or imprisonment for life as *ta'zir*, however, no where in it word 'diyat' is mentioned. If the accused is awarded sentence imprisonment for life coupled with diyat, it will amount that he has been sentenced twicely. In view of these circumstances, the punishment of diyat is not in accordance with law as section 53, PPC manifestly described the kinds of punishments separately.

13. Instant appeal stands disposed of in above terms.

JUDGE

g