

**JUDGMENT SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT,
LARKANA**

Criminal Jail Appeal No. D-41 of 2019.

Cr. confirmation No.D-17 of 2019.

Present: .

**Mr. Justice Amjad Ali Sahito &
Mr. Justice Jan Ali Junejo**

Appellant/Applicant: Rajib Ali s/o Rasool Bux Massan
through Mr. Asif Ali Abdul Razak
Soomro, advocate.

Respondent(s): The State through Mr. Ali Anwar
Kandhro, Additional Prosecutor General
for the State

Date of hearing: 15.04.2025

Date of Decision: 15.04.2025

J U D G M E N T

AMJAD ALI SAHITO, J.- This single judgment will suffice for the disposal of the aforementioned appeal arising out of Crime No. 94 of 2013, for the offence under section 302, 337-A (ii), 337-F (ii), P.P.C registered at P.S Nasirabad, passed by the learned 1st Additional Sessions Judge/MCTC, Kambar. Through the impugned judgment dated 10.07.2019, the appellant, namely, Rajib Ali s/o Rasool Bux Masan was convicted for the offence under section 302 (b) PPC for murdering his mother Mst. Ameera & minor brother Barkat Ali, therefore, were sentenced to death as Tazir U/S 302 (b) PPC for each murder, he be hanged by the neck till he was dead subject to confirmation by this court and he was also directed to compensate the LRs of the deceased to the tune of RS.1,00,000/ for each murder in terms of section 544-A Cr.P.C (Total compensation of RS.2,00,000/-) and in case of non-payment thereof he will undergo S.I for six months for each murder. A

reference for confirmation of the death sentence was also sent to this Court.

2. The facts of the case of prosecution are that on 07.09.2013 at 1000 hours (10:00 am), complainant Rasool Bux Massan lodged an FIR at Police Station stating therein that on the eventful day viz 07.09.2013, he along with his son Bakhat Ali & nephew Abdul Hameed & family members was present in his house, where at 0900 hours (9: 00 am) his son Rajab Ali entered into the house smoking a cigarette and he, having forbade him from smoking snatched cigarette and threw it on which accused Rajab Ali became annoyed, took a scissor lying there and inflicted it to minor Barkat Ali (complainant's son) aged about 05 years at his chest and on their resistance accused also inflicted it to his father (complainant), mother Mst. Ameeran and wife Mst. Zakia. Consequently, the complainant's minor son Barkat Ali, aged about 05 years took his last breath on the spot, his wife Mst. Ameeran (wife of the accused) on the following day during treatment and the complainant and his daughter-in-law Mst. Zakia (wife of the accused) sustained injuries at his hands

3. After the usual investigation, a challan was submitted to the competent court. The learned trial Court framed the charge against the present accused Rajib Ali Massan at Exh.04, to which he pleaded not guilty and claimed trial vide plea at Exh.05

4. In support of his case, the prosecution examined the following nine P.Ws:

i) Complainant Rasool Bux Massan (PW.01 Exh.07 Dated: 20.06.2019), who tendered in evidence FIR crime NO. 94/2013 at Exh.7/A

ii) Eye witness Bakhat Massan (PW.02 Exh.08 Dated: 20.6.2019)

iii) Eye witness Abdul Hameed Massan (PW.03 Exh.09 Dated: 20.6.2019)

iv) Eye witness Mst.Zakia (PW.04 Exh.10 Dated: 24.06.2019)

v) Mashir Asad Massa, (PW.05 Exh.11 Dated: 24.6.2019, who tendered in evidence original mashirnama of inspection of injuries of the complainant, original mashirnama of arrest, body search of accused and recovery of crime weapon viz scissor dated: 07.09.2013, original mashirnama of inspection of place of incident & dead body of the deceased minor child Barkat Ali, original Danisthnama of deceased child Barkat Ali, original mashirnama of inspection of dead body of the deceased Mst. Ameeran dated: 9.09.2013 & original Danishtnama of deceased Mst. Ameeran at Exh.11/A to 11/F.

vi) Dr.Thakur das Pinjani, (PW.06 Exh.12 Dated: 27.06.2019), who tendered in evidence Lash chakas form & original post.mortem report of deceased minor child Barkat Ali at Exh.12/A & 12/B.

vii) Dr. Tabasum Abbasi, (PW.07 Exh.13 Dated: 27.6.2019, who tendered in evidence Lash chakas form & original post.mortem report of Mst.Ameeran at Exh.13/A & 13/B,

viii) Tapedar Anwar Ali Jatoi, (PW.08 Exh.14 Dated: 27.06.2019), who did not produce site sketch.

ix) ASI Ghulam Abbas Joyo, (PW.09 Exh.15 Dated: 02.07.2019), who, being well conversant confirmed signature & hand-writing of author cum I.O SIP Muhammad Liaque Abbasi (now deceased, and also tendered in evidence positive original chemical Examination report bearing NO.2076 Dated: 24.09.2013 at Exh.15/A. The learned DDPP closed evidence side vide statement dated: 02.07.2019

5. Statement of accused under section 342 Cr.P.C was recorded. In his statement, the appellant denied all the allegations leveled against him by the prosecution and claimed his innocence. The appellant neither examined himself on oath under section 340 (2) Cr.P.C. nor any witness in his defense. After observing all the legal and requisite formalities, the trial Court found the appellant guilty of the offence and pronounced the sentence as stated above.

6. Learned counsel for the appellant after going through the entire prosecution evidence pointed out certain contradictions in the deposition recorded before the trial Court; complainant and eyewitnesses have excused the accused and they are family members, hence are interested and their evidence is not believable so the accused may be acquitted. It is pertinent to observe here that the learned counsel failed to substantiate his contention and also did not rely upon any case law to substantiate his contention, which otherwise also does not find support from material & evidence brought on record and hence stands repelled. He further contended that the prosecution could not establish the allegations against the appellant through their evidence, even the evidence of the complainant and his witnesses is not in the line as well as the medical evidence does not support the ocular account. The appellant in his statement established his innocence and their evidence could not be shaken by the prosecution but the trial Court has ignored the same. He prayed for the acquittal of the appellant; that the appellant had no intention to kill the deceased as defined under part (a) of section 300 PPC, hence, the sentence under section 302 (b) PPC is not justifiable. He submits that if acquittal is not possible then the sentence may be converted from 302 (B) to 302 (C) PPC.

7. On the other hand, the learned Additional Prosecutor General supported the impugned judgment. However, he did not object to the conversion of the sentence from 302 (B) to 302 (C) PPC.

8. We have heard the arguments advanced by the learned counsel for the appellant as well as D.P.G. Sindh and have scrutinized the entire material with the able assistance made before us.

9. On perusal of the record, it is crystal clear from the ocular as well medical evidence that the deceased minor boy Barkat Ali and Mst. Ameeran died due to unnatural death. The complainant has stated that on the eventful day viz 07.09.2013 he along with his Bakhat Ali & nephew Abdul Hameed & family members was present in his house where at 900 hours (09:00 am) his son Rajab Ali entered the house smoking a cigarette and he, having forbade him from smoking snatched cigarette and threw it on which accused Rajab Ali became annoyed, took a scissor lying there and inflicted it to minor Barkat Ali (complainant's son) aged about 05 years at his chest and on their resistance accused also inflicted it to his father (complainant), Mst. Zakia (wife of accused), his wife Mst. Ameeran (wife of the complainant) died on the following day during treatment and the complainant and his daughter-in-law Mst.Zakia (wife of the accused) sustained injuries at his hands.

10. The complainant (PW.1 Exh.07) and three eye witnesses (PWs 2 to 4 Exh.08 to 10) named above unanimously deposed that on 07.09.2013 they along with other members were sitting in the house situated at village Golo Ganwas Taluka Nasirabad where suddenly Rajib Massan (present accused) entered the house while smoking and the complainant, being his father restrained him from smoking and also threw the cigarette on which he (accused Rajib Massan) got annoyed and hit his minor brother Barkat Ali, aged about 05 years (son of the complainant) with a scissor at his chest so they all along with Mst. Ameera tried to take scissors from him on he (accused Rajib Massan) also caused scissor blows to the complainant, his mother Mst. Ameera as well as his wife Mst. Zakia sustained injuries at his hands and they tied the accused in the house but minor Barkat Ali succumbed to injuries on the spot and Mst. Ameeran also succumbed to injuries on 9.09.2013, for which the complainant lodged an FIR against the accused on the same date. Eyewitnesses of the incident Bakhat Massan, Abdul

Hameed Massan and Mst. Zakia was examined by the prosecution, who also stated the same story as deposed by the complainant. Mashir Asad Massa, acted as mashir of inspection of injuries of complainant, mashir of arrest and mashir of body search of accused and recovery of crime weapon viz scissor dated: 07.09.2013, mashir of inspection of place of incident & dead body of the deceased minor child Barkat Ali, mashir of inspection of dead body of the deceased Mst. Ameeran. Dr. Thakur Das Pinjani, conducted the post-mortem of deceased minor child Barkat. Lady Dr. Tabasum Abbasi conducted the post-mortem of Mst. Ameeran. Tapedar Anwar Ali Jatoti visited the place of the incident but has not produced a site sketch. ASI Ghulam Abbas Joyo, (PW.09) was being well conversant and confirmed the signature & and writing of author cum I.O SIP Muhammad Liaque Abbasi (now deceased, and also tendered in evidence positive original chemical Examination report bearing NO.2076 Dated: 24.09.2013 at Exh.15/A.

11. In support of the case, the prosecution has examined Dr. Thakur Das Pinjani (PW.6 Exh.12), who has deposed that on 07.09.2013, he while his posting as Medical Officer Taluka Hospital Nasirabad received a dead body of deceased Barkat Ali S/O Rasool Bux Massan, aged about 05 years through P.C/1991 Assadullah P.S Nasirabad along with a police letter for post-mortem, examination and report which he started at 12: 30 pm and finished it at 02:00 pm on the same date and examination of the body he found External & Internal injuries as below.

External Injuries.

- i) Incised punctured type wound 03x 05 cm x deep pleural cavity on left side of chest below nipple.
- ii) Incised punctured type of wound 02 cm x 0.5 cm x deep on left hand posterior.
- iii) Incised punctured type of wound 02 cm x 05 cm x deep bone on right arm posterior.

- iv) Incised punctured type of wound 02 cm x 05 cm deep bone on the right arm above injury No.3.

Internal Injuries.

Walls, ribs and cartilages were ruptured, Pleura were ruptured, the left lung was ruptured, the pericardium and heart were ruptured blood vessels were also ruptured.

12. The medical officer observed that the duration between death & post-mortem was within a few minutes, the probable time between death & post-mortem was about three hours & 30 minutes and the death of the deceased occurred due to hemorrhagic shock and injury No.1 to the vital organ as left lung & heart was sufficient to cause death in the ordinary course of nature which was anti-mortem in nature caused with incised penetrating type of weapon (sharp).

13. The prosecution has examined another medical officer Dr.Tabasum Abbasi (PW.7 Exh.13) deposed that on 9.09.2013 she while her posting as a Senior Women Medical Officer Rural Health Centre Nasirabad received a dead body of deceased Mst. Ameeran W/O Rasool Bux Massan, aged about 45 years through PC/1991 Assadullah P.S Nasirabad at RHC Nasirabad along with a police letter for post-mortem and report, which she started at 12: 30 pm and finished it at 2: 30 pm and on her examination found following External & Internal Injuries:

External Injuries.

1. Stitched wound 02 cm x 1/2 cm on right side of chest below breast.
2. Stitched lacerated type of wound 03 cm x 03 cm on left side of chest below left breast near to epigastria region.
3. Stitched lacerated type of wound 04 cm x 02 cm near umbilicus.

Internal Injuries.

Right & left lungs were partially damaged with blood clots in cavity fracture of 6th & 7th thoracic ribs, part of peritoneum was damaged

14. The medical officer observed that the duration between death & post-mortem was 48 hours, the probable time between death & post-mortem was three to four hours and the death of the deceased occurred due to damage to vital organs like lungs, which caused cardio neurogenic shock and all injuries were anti-mortem in nature.

15. It is also noteworthy to observe that SIP Muhammad Liaque Abbasi, who authored FIR bearing crime NO.94/2013 and also conducted an investigation, has reportedly expired hence prosecution examined ASI Ghulam Abbas Joyo (PW.09 Exh.15), who claimed to be well conversant with his signature and hand-writing and also deposed that on 7.09.2013 while his posting as a Police Constable at P.S Nasirabad SIP Muhammad Liaque Abbasi, who was posted as Additional SHO, wrote FIR of complainant Rasool Bux Massan in respect of murder of his wife & son by his son and also investigated it. Besides, he also saw FIR and other documents (Exh.07/A & 11/A to 11/F) and confirmed handwriting and signature appearing thereon to be of SIP Muhammad Liaque Abbasi. However, in his cross-examination, he deposed that, "It is correct to suggest that I was not present with SIP Muhammad Liaque Abbasi at the time of conduction of investigation by him, It is incorrect to suggest that I am not well conversant with signature & handwriting of SIP Muhammad Liaque Abbasi"

16. The prosecution has examined ASI Ghulam Abbas Joyo (PW.09 Exh.15), who produced in evidence an original Chemical examination report bearing NO.2076 Dated: 24.09.2013 issued by Chemical examiner to Government of Sindh, Chemico Laboratory Sukkur at Rohri at Exh.15/A which contains that earth material (parcel NO.1) and scissor (parcel no.2) of crime No.94/2013 P.S Nasirabad are stained with

human blood and authenticity or legality thereof was not shaken in cross-examination.

17. In view of the above circumstances, we observe that in the instant case, there was no target of the appellant for this sad incident and despite a lengthy cross-examination by the defense counsel, the Complainant, eyewitness, Investigating Officer, Mashir, Medical Officers and other witnesses by asking multiple questions to shatter their confidence but they could not extract anything from any of the said witnesses, who remained consistent on all material points. The prosecution successfully proved that fatal injuries on the head of the deceased Barkat and Mst. Ameeran were inflicted by the appellant.

18. However, after thoroughly examining the evidence of eyewitnesses, we found no evidence to suggest that the appellant caused injuries to the deceased and injured. There was no prior dispute or ill will reported between the complainant party and the accused, nor was there any evidence indicating that the murder of Mst. Ameeran and minor Barkat were premeditated or committed with a common intention. The incident appears to have occurred suddenly when appellant Rajib Ali entered to house while smoking. Seeing so the complainant/father restrained him from smoking and threw such cigarette on which accused Rajib got annoyed and hit a scissor the deceased persons. Therefore, we observe that the appellant had no intention to kill the deceased as defined under part (a) of section 300 P.P.C, hence, the sentence under section 302 (b) PPC is not justifiable but the case of the appellant falls under section 302 (c) PPC. In this regard, we are 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]**.

19. 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.”

20. For what has been discussed above, instant Cr. Jail Appeal is **dismissed** however, the conviction and sentence awarded through impugned judgment dated 10.07.2019 by the

learned trial court to 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 converted from death to Imprisonment for eleven (11) years. However, the fine amount of Rs.2,00,000/- [Rupees Two Hundred Thousand] is ordered to be paid to the legal heirs of the deceased as compensation provided under section 544-A Cr.P.C; in case of failure whereof, the appellant shall suffer S.I. for six months. 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. **Consequently, Criminal Jail Appeal No. D-41 of 2019 stands disposed of with the above modification.**

21. As a result of our above findings, the reference as provided u/s 374 Cr.P.C. submitted by the trial Court for confirmation of the death sentence answered in to **negative** and disposed of accordingly.

JUDGE

JUDGE

Abdul Salam/P.A