

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT,
MIRPURKHAS**

Criminal Appeal No. S-63 of 2024

Appellant : Attaullah alias Soomar son of Mooro
Through Mr. Om Parkash H. Karmani,
Advocate.

Complainant: Moula Bux son of Muhammad Khan @ Soomar

Respondent: The State
Through, Mr. Neel Parkash D.P.G.

Date of hearing : 07.07.2026
Date of judgment : 20.07.2026

JUDGMENT

Khalid Hussain Shahani, J.--- By means of the instant criminal appeal, the appellant has called into question the judgment dated 11.02.2020 rendered by the learned Additional Sessions Judge-I/Model Criminal Trial Court, Mirpurkhas, in Sessions Case No.151 of 2019, arising out of Crime No.29 of 2019 registered at Police Station Phulladiyoon for offence under Section 302, P.P.C., whereby he stood convicted under Section 302(b), P.P.C. and was condemned to imprisonment for life as Ta'zir, together with a direction to pay compensation of Rs.200,000/- to the legal heirs of the deceased Muhammad Yousuf under Section 544-A, Cr.P.C., in default whereof to undergo simple imprisonment for six months, with the benefit of Section 382-B, Cr.P.C. duly extended.

2. Shorn of unnecessary detail, the prosecution's narrative is that complainant Moula Bux lodged the F.I.R. on 04.07.2019, asserting that on 02.07.2019, while he, along with Faiz Muhammad and Hussain Bux, was seated at the otaque/inn of landlord Haji Hussain Ali Kalro, the appellant, a relative with whom relations had long since soured, led away the deceased Muhammad Yousuf under the pretext of some errand. The deceased failed to return that night, and on the following morning word reached the complainant party that a corpse lay abandoned on a katchi rasti within the land of Ahmed Kumbhar. Upon reaching the spot, they discovered the lifeless body of

Muhammad Yousuf, disfigured by wounds inflicted with a sharp-cutting weapon upon the face.

3. Investigation having concluded, a report under Section 173, Cr.P.C. was submitted, the appellant was arraigned, and upon his plea of not guilty the case proceeded to trial. The prosecution marshalled ten witnesses, the complainant, the last-seen witnesses, the Medical Officer, the investigating officers, the mashirs of arrest and recovery, and the Judicial Magistrate who had recorded the appellant's confessional statement. In his examination under Section 342, Cr.P.C., the appellant denied all culpability, attributed his implication to longstanding enmity, claimed to have been in Karachi at the material time, and alleged that his mother's unlawful detention had been engineered to extort a confession from him; yet he neither offered himself for examination on oath under Section 340(2), Cr.P.C. nor adduced any defence evidence in substantiation.

4. The record reflects that, on notice, the complainant appeared in person on 18.11.2025 and expressed his confidence upon the learned Additional Prosecutor General (A.P.G.) to proceed with the case on his behalf.

5. Learned counsel for the appellant contended with considerable emphasis that the prosecution's edifice rests wholly upon circumstantial testimony; that the last-seen evidence emanates from witnesses inherently interested and riddled with inconsistency; that no one bore witness to the occurrence itself; that independent inhabitants of the otaque, though available, were conspicuously left unexamined; that the recovery of the hatchet is shrouded in doubt, having been effected from an open and accessible place; and that the retracted confessional statement, standing unsupported by trustworthy independent corroboration, cannot sustain the grave conviction under Section 302(b), P.P.C. Learned Deputy Prosecutor General, while defending the appellant's culpable involvement, candidly and with commendable fairness submitted that the totality of evidence on record would more appropriately warrant conversion of the conviction from Section 302(b) to Section 302(c), P.P.C., rather than an unqualified affirmance of the impugned finding.

6. This Court has undertaken a meticulous re-appraisal of the record in light of these submissions. Where a conviction touches the gravest of offences, the taking of human life and where that conviction rests not upon direct ocular testimony but upon

circumstance, recovery, and confession, every incriminating strand woven by the prosecution demands the most exacting scrutiny.

7. That the death of Muhammad Yousuf was homicidal admits of no dispute whatsoever. Dr. Rasheed Ahmed, Medical Officer, testified that upon conducting the postmortem examination on 03.07.2019, he discovered five wounds inflicted by a sharp-cutting instrument upon the face and head, and that death ensued from hemorrhage and shock consequent thereupon. This testimony finds ample reinforcement in the postmortem report and the contemporaneous police record pertaining to inspection and dispatch of the corpse.

8. It remains, however, a settled principle that medical evidence, however conclusive as to the fact and manner of death, is silent as to the identity of the perpetrator. The pivotal question before this Court, therefore, is whether the prosecution has forged an unbroken chain connecting the appellant to the homicide, and, if so, what precise legal character that chain of evidence ultimately supports.

9. The prosecution leaned principally upon the depositions of complainant Moula Bux, PW Faiz Muhammad, and PW Hussain Bux, each of whom testified that the appellant led the deceased away from the otaque on the evening of 02.07.2019, and that the corpse surfaced the following morning. Their presence at the otaque, given their established connection with the agricultural enterprise of landlord Haji Hussain Ali Kalro, cannot be dismissed as improbable, and their testimony coalesces into one consistent circumstance: that the deceased was last seen departing in the appellant's company and was found dead by dawn.

10. Yet their testimony does not attain that unimpeachable calibre necessary to sustain a conviction under Section 302(b), P.P.C. without qualm. All three witnesses are bound to the deceased by close relation, all concede prior discord with the appellant, and though numerous others were said to be present at the otaque, none was associated with the investigation or summoned to testify. The Investigating Officer himself conceded that he recorded no statement from any independent laborer, nor even from the landlord Haji Hussain Ali Kalro.

11. Beyond this, discernible discrepancies pervade their account, as to the hour the deceased was taken away, the distances traversed, the identity of the informant to police, and even the number of wounds and articles found near the body. While not every contradiction proves fatal to a prosecution case, in a matter built upon circumstance such infirmities inevitably diminish the evidentiary weight of the last-seen account and render it unsafe to treat as a self-sufficient pillar for sustaining a conviction of intentional murder within the strict contemplation of Section 302(b), P.P.C.

12. That said, these discrepancies fall short of wholly effacing the prosecution's version regarding the appellant's company with the deceased in the moments preceding his death. The essential substratum of this testimony survives intact, and, viewed alongside the remaining evidence, the last-seen circumstance retains genuine corroborative value.

13. The appellant was apprehended on 07.07.2019, and thereafter, on 10.07.2019, the prosecution claims to have recovered a hatchet at his pointing. The mashir of recovery, HC Muhammad Yakoob, and the Investigating Officer both lent support to this recovery, while the Chemical Examiner's report confirmed that the hatchet, along with associated clothing and articles, bore traces of human blood.

14. Nevertheless, the probative force of this recovery is not beyond reproach. No independent private mashir was associated despite availability; the recovered article was an ordinary hatchet of a type readily obtainable in the market; the mashirnama omitted any mention of visible blood-staining at the time of recovery; no fingerprint analysis was undertaken; and the Investigating Officer admitted that no malkhana register entry was produced before the trial court. These lapses erode the conclusiveness of the recovery and render it perilous to accord it a determinative role in sustaining conviction under Section 302(b), P.P.C.

15. Even so, this circumstance cannot be discarded in its entirety. The recovery followed closely upon the appellant's arrest, the hatchet was duly forwarded for chemical examination, and the resultant report disclosed human blood thereupon. Though falling short of

conclusive proof, this circumstance lends some corroborative weight when read conjointly with the other incriminating features on record.

16. The weightiest evidence against the appellant is; however, the judicial confession recorded on 15.07.2019 by the learned Civil Judge/Judicial Magistrate-II, Mirpurkhas. The Magistrate testified that the appellant, upon being produced before him, was cautioned that he was under no compulsion to confess, was afforded a reflective interval from 11:15 a.m. to 1:15 p.m. during which police presence was strictly excluded, and only thereafter volunteered a confessional statement admitting that he had struck the deceased with a hatchet, causing his death. The Magistrate further certified the confession's voluntariness, and that it was read over to the appellant in Sindhi, a language he comprehended and affirmed as accurate.

17. Undoubtedly, the appellant subsequently retracted this confession in his statement under Section 342, Cr.P.C., alleging coercion through the unlawful detention of his mother. A retracted confession, as a matter of settled jurisprudence, must be approached with circumspection and cannot, standing alone, sustain a conviction under Section 302(b), P.P.C. absent material corroboration from independent circumstances. The appellant's allegation of duress, though unsubstantiated by defence evidence, nonetheless commands a cautious evaluative approach.

18. On careful reflection, however, the confession cannot be dismissed in toto. It was recorded by a Magistrate who entered the witness-box and detailed the safeguards he observed; no procedural infirmity of consequence has been demonstrated to impugn its reliability; and the confession finds partial corroboration in the last-seen evidence, the homicidal character of the death by sharp-cutting injuries, the subsequent recovery of the hatchet, and the Chemical Examiner's finding of human blood thereupon.

19. Yet the confession does not attain the stringent and unimpeachable degree of corroboration demanded for sustaining conviction under Section 302(b), P.P.C. The corroboration available is circumstantial rather than direct; the last-seen account proceeds from interested witnesses not wholly free of contradiction; the recovery evidence falls short of the ideal; and no eye-witness account of the occurrence exists. Accordingly, while the judicial confession is

not liable to wholesale exclusion, its retracted character, coupled with the quality of corroboration on record, materially bears upon the legal characterization of the offence.

20. The learned trial Court, persuaded principally by the judicial confession, the last-seen account, and the recovery, convicted the appellant under Section 302(b), P.P.C. Upon independent reappraisal of the entirety of the evidence, this Court finds that the prosecution has indeed established the appellant's involvement in the death of Muhammad Yousuf, yet the evidence falls short of the certitude requisite to sustain conviction in the more aggravated form contemplated under Section 302(b), P.P.C.

21. The case is conspicuously bereft of direct ocular testimony. The precise manner of the occurrence emerges solely from the confessional statement, itself subsequently retracted, wherein the appellant narrated that as he proceeded toward the otaque, the deceased, armed with a lathi, pursued him, whereupon he delivered the fatal hatchet blow. This narrative, though incriminating, does not present a clear, direct, and independently corroborated account of premeditated, straightforward intentional murder as originally set forth in the F.I.R.; rather, it unveils a factual complexion suggesting that the occurrence may have unfolded in circumstances not fully illuminated by the prosecution's other evidence.

22. It merits particular notice that upon the conclusion of arguments, and in light of the evidence brought on record, the learned Deputy Prosecutor General for the State extended a proposal for the conversion of conviction and sentence from Section 302(b), P.P.C. to Section 302(c), P.P.C., a proposal that was candidly conceded to by the learned counsel for the appellant. This concurrence between the State and the defence, arrived at upon a fair and considered assessment of the evidentiary record, lends further weight to this Court's independent conclusion. Thus, while the evidence suffices to negate the appellant's total innocence and to sustain his conviction for qatl-i-amd, it does not safely warrant affirmance of the sentence under Section 302(b), P.P.C. Having regard to the cumulative effect of the retracted confession, the last-seen evidence, infirm yet not wholly discredited, the recovery of the blood-stained hatchet, the medical evidence establishing homicidal death

by sharp-cutting weapon, and the conspicuous absence of direct ocular testimony, the ends of justice would be substantially served by altering the appellant's conviction from Section 302(b), P.P.C. to Section 302(c), P.P.C.

23. On the question of sentence, it emerges from the jail roll furnished by the Senior Superintendent, Central Prison, Mirpurkhas, that the appellant has already undergone incarceration for 16 years, 2 months and 13 days, inclusive of remissions, a period commensurate with the maximum sentence contemplated under Section 302(c), P.P.C. As the present exercise is confined to the conversion of conviction within this very appeal and upon the self-same record, this Court perceives no warrant to depart from that position.

24. Consequently, while maintaining the appellant's conviction for causing the death of the deceased Muhammad Yousuf, the same is hereby altered from Section 302(b), P.P.C. to Section 302(c), P.P.C., and the sentence is reduced to the period already undergone. The compensation awarded by the learned trial Court under Section 544-A, Cr.P.C. shall stand maintained, and the default sentence in the event of non-payment thereof shall remain as originally ordered.

25. In consequence, this criminal appeal is dismissed to the extent of conviction but allowed to the extent of sentence in the terms delineated above. The conviction and sentence recorded by the learned trial Court under Section 302(b), P.P.C. vide judgment dated 11.02.2020 are hereby converted into conviction under Section 302(c), P.P.C., with sentence reduced to imprisonment already undergone, subject to payment of compensation as directed by the trial Court. The Office shall issue the release writ forthwith, provided the appellant is not required in connection with any other case.

JUDGE