

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

MR. JUSTICE MUHAMMAD HASHIM KHAN KAKAR
MR. JUSTICE SALAHUDDIN PANHWAR
MR. JUSTICE ISHTIAQ IBRAHIM

JAIL PETITION NO.149/2018 AND CR.PL.A NO.374/ 2018

*(Against the judgment dated 31.01.2018, in Criminal
Appeal No.534/2015 and Murder Reference No.08 of 2016)*

*Amir Khan
Zahid Anjum*

*(in JP No.149 of 2018)
(in CrI.P.L.A. No.374/2018)*

...Petitioner (s)

VERSUS

*The State
Amir Khan etc*

*(in JP No.149 of 2018)
(in CrI.P.L.A. No.374/2018)*

...Respondent(s)

For the Petitioner (s):

Syed Rifaqat Hussain Shah, AOR and Basharatullah
Khan, ASC *(in JP No.149/2018)*
Mr. Laiq Khan Swati, ASC *(in CrI.PLA No.374)*

For the State:

Mr. Tariq Siddique Addl. PG Punjab

Date of hearing:

08.05.2025

JUDGMENT

ISHTIAQ IBRAHIM, J.- The petitioner, Amir Khan, was charged for the murder of Shahid Amin (deceased) and after facing a regular trial in case FIR No. 538 dated 20.11.2012, registered under Section 302 of the Pakistan Penal Code, 1860 ("PPC"), he was convicted by the learned Sessions Judge, Rawalpindi ("**Trial Court**") under Section 302(b) PPC and sentenced to death as *Ta'azir*, along with a direction to pay compensation of Rs. 250,000/- as compensation to the legal heirs of the deceased under Section 544-A of the Code of Criminal Procedure, 1898 ("**Cr.P.C.**"), and in default thereof to further undergo six months simple imprisonment vide judgment dated 10.11.2015.

2. The learned Lahore High Court, Rawalpindi Bench, while answering the Murder Reference No. 08 of 2016 sent by the learned Trial Court in the negative, partly allowed the appeal filed by the convict/petitioner maintaining his conviction under Section 302(b) PPC. However, death sentence of the petitioner/convict was

altered to imprisonment for life extending him benefit of Section 382-B Cr.P.C. vide judgment dated 31.01.2018 ("**Impugned Judgment**").

3. Through Jail Petition No. 149 of 2018, the petitioner/convict has challenged his conviction and sentence as recorded in the impugned judgment while through connected Criminal Petition for Leave to Appeal No. 374 of 2018, Zahid Anjum, the complainant/petitioner, has impugned the same judgment seeking enhancement of the sentence awarded to the convict/respondent from life imprisonment to the normal penalty of death as prescribed under Section 302 PPC.

4. The prosecution's case, as narrated in the First Information Report ("**FIR**") registered on the basis of the statement (Exh.PC) of the complainant Zahid Anjum (PW-9) is that on 20.11.2012, the complainant along with his brothers Wahid Anjum, Shahid Amin (the deceased), and his cousin Zafar Iqbal (PW-10) were standing in a street located in Hazra Colony, Rawalpindi where the deceased told that he had purchased a Zong SIM from the petitioner Amir Khan, but upon activation, the SIM contained no balance. The deceased therefore requested his brothers and cousin to accompany him to the petitioner's shop to inquire into the matter. In compliance, the complainant and the aforementioned witnesses accompanied the deceased to the shop of the petitioner. Upon being informed by the deceased that the SIM lacked any balance, the petitioner disclaimed responsibility which led to an exchange of hot and harsh words between the deceased and the petitioner culminating in a physical altercation. During the course of the scuffle, the petitioner allegedly retrieved a pistol from a drawer in his shop and fired at the deceased, striking him on the left flank. Despite efforts by the prosecution witnesses to apprehend the petitioner, he succeeded in fleeing the scene. The deceased then injured was being shifted to the District Headquarters Hospital, Rawalpindi, when he succumbed to the injury.

5. We have heard the arguments of learned counsel for the parties and the Additional Prosecutor General Punjab for the State and perused the record and evidence with their able assistance.

6. From the record and the evidence adduced by the prosecution, it is manifest that the occurrence took place within the shop premises of the petitioner, Amir Khan on 20.11.2012 at approximately 04:00 p.m. The matter was reported to the police with commendable promptitude at 05:40 p.m. by the complainant, Zahid Anjum (PW-9) to Azhar Hussain, Sub-Inspector (PW-11), thereby substantially excluding the possibility of deliberation or consultation in falsely implicating the petitioner. The ocular account of the incident was furnished by the complainant (PW-9) and Zafar Iqbal (PW-10), both of whom are natural witnesses, being

related to the deceased and present at the scene of occurrence. They have categorically and consistently attributed a solitary firearm injury to the petitioner, which was inflicted upon the deceased during a physical altercation. The incident, having occurred in broad daylight, leaves no room for mistaken identity. The testimony of the eyewitnesses is coherent and consistent not only with each other but also with the medical evidence on all material particulars, including the date, time, and location of the occurrence. Both the eyewitnesses have stated unequivocally that the deceased had purchased a Zong SIM from the petitioner a day prior to the incident. Upon discovering that the SIM contained no balance, and the petitioner's refusal to accept responsibility, an exchange of hot words ensued, followed by a physical grappling initiated by the deceased. It was in the heat of this altercation that the petitioner drew a pistol from a drawer of his shop and fired a single shot at the deceased, which struck the deceased on the left flank. The medical evidence, as provided by Dr. Taseer Ahmad Qureshi (PW-8), who conducted the post-mortem examination, fully supports/corroborates the ocular account. According to the medical officer, a solitary projectile entered the deceased's left upper arm antero-medially, approximately 16 cm from the shoulder joint, exited from the inner side of the arm, re-entered below the armpit, and exited again from the right side of the trunk. The bullet's trajectory caused laceration of the heart, resulting in massive hemorrhagic shock, which proved fatal.

7. On a meticulous appraisal of the evidence on record, it is evident that the occurrence took place at the spur of the moment without any premeditation or prior enmity between the deceased and the petitioner/convict. It was the deceased who, accompanied by his brothers and cousin, approached the petitioner's shop and initiated a confrontation that escalated into physical grappling. In an instinctive reaction to the perceived threat to his person, the petitioner resorted to the use of a firearm. However, as the deceased was unarmed at the time of the occurrence, therefore, the act of firing a shot even if in self-defence exceeded the bounds of lawful self-defence as contemplated under the law. This Court has consistently held that in cases where the accused, while acting in self-defence or under sudden provocation, causes the death of a person, such circumstances may justify a conviction under Section 302(c) of the Pakistan Penal Code, 1860. Yet there is another fact that if the deceased had not visited the shop of the petitioner/convict, the occurrence would not have taken place. 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 petitioner/convict nor had he acted in brutal or unusual manner. In the circumstances Exception 4 contained in the erstwhile section 300 PPC squarely stood attracted to the case which for the sake of convenience is reproduced below:-

“Exception 4:-Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon sudden quarrel and without the offender’s having taken undue advantage or acted in cruel or unusual manner.”

This Court in case titled, “The State Vs Muhammad Hanif and 05 others” **(1992 SCMR 2047)**, has held that all the matters which were initially dealt with by erstwhile section 304 PPC, are now to be dealt with under section 302 (c) PPC. Same view has been reiterated by this court in case titled, “Azmat Ullah vs the State” **(2014 SCMR 1178)**, relevant part of which is reproduce below:-

“The case of the prosecution is that at the relevant date and time the appellant and his brother namely Imran suddenly developed a quarrel and on the basis thereof the appellant was enraged and he caused injuries to the said brother with a Churri which injuries led to his death. The FIR in this case had been lodged by none other than father of the appellant.Leave to appeal had been granted to consider as to whether the circumstances of this case attract the provisions of section 302(b) PPC or of section 302(c) PPC. A bare perusal of the FIR, the statements made by the eyewitnesses before the learned trial Court and the findings recorded by the learned Court 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 Churri on his chest whereas another blow was received by him on the outer aspect of his left upper arm. The doctor conducting the postmortem 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 Churri. These factors of the case squarely attract Exception 4 contained in the erstwhile provisions of section 300 PPC. It has already been held by this Court in the case of Ali Muhammad vs Ali Muhammad and another (PLD 1996 SC 274) that the cases falling in the exception contained in the erstwhile provisions of section 300 PPC, now attract the provisions of section 302 (c) PPC. 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 brutal or unusual manner. In the circumstances Exception 4 contained in the erstwhile section 300 PPC 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) PPC.

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) PPC is concerted into that for an offence under section 302(c) PPC and consequently his sentence is reduced from rigorous imprisonment for twenty-five years to rigorous imprisonment for ten years”.

Reliance may also be placed on the on the view of this court in cases titled,, “Zeeshan alias Shani vs the State” **(PLD 2017 Supreme Court 165)**, “Raza and another Vs the State and others” **(2020 SCMR 1185)** and “Muhammad Ajmal Vs the State” **(2022 SCMR 88)**.

8. In view of the totality of circumstances discussed above including the absence of premeditation, the sudden and spontaneous nature of the occurrence, the fact that only a single shot was fired by the petitioner/convict, the unarmed status of the deceased, and the consistency between the ocular and medical evidence, we are persuaded to hold that the case of the petitioner squarely falls within the ambit of Section 302(c) of the Pakistan Penal Code, 1860. Consequently, the instant jail petition is converted into an appeal and is partly allowed. The conviction of the petitioner/convict recorded under Section 302(b) PPC through the impugned judgment is hereby altered to one under Section 302(c) PPC. Accordingly, the sentence of imprisonment for life awarded to the petitioner/convict is reduced to rigorous imprisonment for fourteen years. The direction for payment of compensation to the legal heirs of the deceased, as stipulated in the impugned judgment, along with the consequences of default thereof, shall remain intact and enforceable in accordance with law. Benefit of Section 382-B Cr.P.C. is extended to the petitioner/convict.

Crl.P.L.A. No.374 of 2018

On modification of conviction and sentence of the convict/respondent the instant petition filed by the petitioner/complainant for enhancement of sentence of the respondent-convict has become infructuous which is hereby dismissed and leave is refused.

Announced in open court at Islamabad on 12/ May 2023

Approved for reporting.
M.Siraj Afridi PS