

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Manzoor Ahmad Malik
Mr. Justice Syed Mansoor Ali Shah
Mr. Justice Qazi Muhammad Amin Ahmed

Criminal Appeal No.6-P/2010

(Against the judgment dated 14.5.2009
passed by Peshawar High Court, Peshawar in
Cr. Revision No.158/2002)

Alamgir

...Appellant(s)

VERSUS

Gul Zaman & others

...Respondent(s)

For the Appellant(s) : Mr. Astaghfirullah, ASC

For Respondent No.1 : Nemo.

For the State: :
Barrister Qasim Wadud,
Additional Advocate General, Khyber
Pakhtunkhwa

Date of Hearing : 29.04.2019

ORDER

Qazi Muhammad Amin Ahmed, J. Through leave of the Court, impugned herein is judgment dated 14.5.2009, whereby a learned division bench of the Peshawar High Court altered respondents' conviction from clause (b) of Section 302 of the Pakistan Penal Code, 1860 into clause (c) thereof. The issue has arisen out of incident dated 10.8.2006 within the remit of Police Station Lund Khwar, District Mardan reported by Alamgir, appellant herein; he arrayed the respondents as well as one Umar Din in the crime report for committing *qatl-e-amd* of his father Gul Mehmood, who surprised them while cutting branches of *keekar* tree and excavating stones from his area. The

appellant endured the assault, however his father succumbed to the injuries. While Umar Rehman co-accused stayed away from law, indicted by a learned Additional Sessions Judge, the respondents were returned a guilty verdict on multiple counts; for *qatl-e-amd* of Gul Mehmood deceased they were convicted under clause (b) of the Section *ibid* and sentenced to imprisonment for life along with direction to collectively pay *diyat* to the tune of Rs.3,65,921/-, to be apportioned amongst the legal heirs. In appeal the learned High Court set aside *diyat* amount and instead directed payment of compensation in the sum of Rs.50,000/- each; respondents' conviction was altered from clause (b) into clause (c) of the Section *ibid*.

2. Learned counsel for the appellant has primarily assailed modification in conviction and sentences consequent thereupon on the ground that there was no occasion for the learned High Court, to modify conviction and sentences, rightly settled by the learned trial Court. It is further argued that the respondents with available weapons took the life of an innocent person '*massom-ud-dum*', without provocation and thus were liable to be visited with the penalty commensurate with the crime believed to have been committed at their hands by both the Courts below. The learned Law Officer has defended the impugned judgment.

3. It is prosecution's own case that occurrence took place in a sudden encounter with no previous bad blood; weapons used in the occurrence though formidable in circumstances were nonetheless not choice selection to mount an assault. Accused side also suffered injuries, conspicuously omitted in the crime report. Spot inspection sans presence of tree branches or excavated stones. Scenario spells out a situation that no one anticipated; once started it aggravated, resulting into injuries to the both, with a heavier toll on the complainant's side. In circumstances respondents' liability more aptly fall within the mischief of clause (c) of

Section *ibid*. The view taken by the learned High Court is inconsonance with the law declared in the case titled Ali Muhammad versus Ali Muhammad and another (PLD 1996 SC 274), reaffirmed in the case titled versus The State. It is by now well settled that situations earlier covered by erstwhile provisions of Section 304 of the Code *ibid* are not catered by clause (c) of aforesaid section of law. Impugned view being well within the remit of law calls for no interference. Appeal is dismissed.

JUDGE

JUDGE

JUDGE

Islamabad, the
29th of April, 2019
Ghulam Raza/*