

**IN THE SUPREME COURT OF PAKISTAN**  
(Appellate Jurisdiction)

**Present:**

Mr. Justice Sardar Tariq Masood  
Mr. Justice Amin-ud-Din Khan  
Mr. Justice Jamal Khan Mandokhail

**Criminal Appeal No. 506 OF 2020**

(Against the judgment dated 10.02.2017 of the  
Lahore High Court, Lahore passed in CrI. A.  
No. 1362 of 2013 and M.R. No. 303 of 2013)

*Muhammad Ajmal*

***Appellant***

**Versus**

*The State*

***Respondent***

For the appellant: Raja Rizwan Ibrahim Satti, ASC

For the state: Mr. Muhammad Usman, Addl.P.G., Punjab

For the complainant: Raja Shafqat Abbasi, ASC

Date of Hearing: 07.10.2021

**JUDGMENT**

**SARDAR TARIQ MASOOD, J.** The appellant Muhammad Ajmal faced trial in case FIR No. 278 dated 19.03.2010, offence under section 302 PPC, registered at police station Shorkot City, District Jhang. On the conclusion of trial, the learned Sessions Judge, Jhang vide judgment dated 11.09.2013, convicted the appellant under section 302 (b) PPC and sentenced him to death, with a direction to pay compensation of Rs.300,000/-, in terms of section 544-A, Code of Criminal Procedure, which shall be recoverable as arrears of land revenue. Aggrieved of his conviction and sentence, the appellant filed a criminal appeal before the Lahore High Court, Lahore. A murder reference was sent by the learned trial court for confirmation or otherwise of sentence of death of appellant. Through the impugned judgment, the learned High Court dismissed the criminal appeal and by converting sentence of death of the appellant into imprisonment for life, answered the murder reference in the negative. Benefit of section 382-B, Code of Criminal Procedure was extended to him. Thereafter, the appellant filed a jail petition before this court, wherein leave was granted on 20.08.2020. Hence, the instant criminal appeal.

2. Learned counsel for the appellant at the very outset contends that leave was granted on the point that whether the case of the appellant comes with the parameters of section 302 (c) PPC or not, hence he will confine his arguments only to that extent. Learned counsel for the

complainant contends that motive has been explained during trial and even in the FIR a dispute of "*lain dain*" was mentioned; further contends that appellant committed the murder in his own shop hence no further leniency can be extended to him. Learned counsel for the complainant relied upon the cases reported as Malik Muhammad Mumtaz Qadri Vs. The State and others (PLD 2016 SC 17), Muhammad Asif Vs. Muhammad Akhtar and others (2016 SCMR 2035) and Sardar Muhammad and another Vs. Athar Zahoor and others (2017 SCMR 1668).

3. We have heard the learned counsel for the appellant, learned Additional Prosecutor General, Punjab as well as the learned counsel for the complainant and perused the available record with their assistance. Before discussing the facts of the present case we would like to discuss the parameters which attracts section 302(c) PPC.

An offence under section 302 (c) PPC will be attracted only in those cases, where exceptions to old provision of section 300 PPC stand attracted. Exception 4 of old section 300 PPC is reproduced as under: -

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

***Explanation: It is immaterial in such cases which party offers the provocation or commits the first assault.***

So bringing the case under the above exception (culpable homicide not amounting to murder). It is required to be established that the case was one of sudden fight, taken place without any premeditation in the heat of passion upon a sudden quarrel and offender had not taken any undue advantage and must had not acted in a cruel or unusual manner.

4. In the case of Ali Muhammad v. Ali Muhammad and another (PLD 1996 SC 274) it was held that there should be no doubt that the cases covered by the exceptions to the old section 300 PPC read with the old section 304, therefore, are cases which were intended to be dealt with under clause (c) of the new section 302 of the PPC. Likewise in the case of Azmat Ullah v. the State (2014 SCMR 1178) it was held that :

*"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."*

The new section 302 itself divides *qatl-i-amd* for the purpose of punishment into three categories i.e.

- a) *qatl-i-amd*, punished with death as *qisas*;
- b) *qatl-i-amd*, punished with death or imprisonment for life as *ta'zir*
- c) *qatl-i-amd*, punished with imprisonment of either description for a term which may extended to twenty-five years, where according to the injunctions of Islam the punishment of *qisas* is not applicable.

Admittedly, in the present case, parties were not inimical to each other and there was no previous ill will between the deceased and the appellant. In the FIR it is specifically mentioned that during repairing the tractor of the deceased, altercation took place between the deceased and appellant due to dispute of money. So at the spur of moment, suddenly altercation took place and according to prosecution's own case, there were exchange of abuses between both of them and then Muhammad Ajmal appellant picked up a hatchet lying in the shop and gave a solitary blow to Muhammad Naeem Khan deceased. Mehmood Khan, complainant while appearing in the court also categorically mentioned that "during repair of tractor there was altercation between Naeem Khan and Ajmal accused present in court on the transaction of some amount. Abusive language was used between them." The whole prosecution during investigation remained silent regarding the detail of "*lain dain*" and an evasive motive was put up in the FIR but during trial Mehmood Khan made improvement that actually Ajmal appellant was under debt of Naeem Khan due to which this occurrence took place. He was duly confronted with his application Exb-PF (through which FIR was chalked out) where this fact was not mentioned. The said Mehmood categorically stated that: -

*"We visited workshop of the accused for repair of our tractor for the first time, on the date of occurrence".*

The other alleged eye witness Changaiz Khan also stated as under: -

*"There was altercation and exchange of abusive language between Naeem Khan and Ajmal accused. All of sudden Ajmal after picking hatchet from his workshop made hatchet blow hitting on left side of the neck of Naeem Khan."*

The above mentioned evidence of both the witnesses clearly indicate that the deceased went to the workshop of appellant, for repair of tractor, for the first time and in the absence of any previous ill will or grudge, at the spur of the moment due to "*lain dain*" probably regarding the payment of work done, by the appellant by repairing the tractor, suddenly there was

altercation, followed by exchange of abusive language between the appellant and deceased, all of a sudden this occurrence took place indicating that there was no premeditation and at the spur of the moment due to abusive language, in the heat passion, appellant gave a solitary blow with the hatchet which was lying there. He did not repeat the blow although deceased was lying on his mercy. He did not take undue advantage nor acted in a cruel or unusual manner. So all the ingredients of above exception are born out from the prosecution cases and his case falls under section 302 (c) PPC. All the parameters mentioned above clearly indicate that it is a case falling under section 302 (c) PPC and not section 302 (b) PPC. The judgments relied upon by learned counsel for the complainant have different facts and in these cases the ingredient of Exception 4 of section 300 (old) PPC were not born out. In the case of **Malik Muhammad Mumtaz Qadri** (supra) this issue was not discussed likewise in the case of **Muhammad Asif** (supra) the accused while taking undue advantage gave successive blows to the deceased and also injured complainant and a passerby whereas in the case of **Sardar Mahmood and another** (supra) no ingredient of above exceptions were present nor born out from the prosecution case whereas in the present case as already discussed, ingredient of Exception 4 of section 300 PPC (old) are born out from prosecution's case. Consequently, this criminal appeal is partly allowed. The conviction of the appellant is converted from section 302 (b) PPC to section 302 (c) PPC and his sentence is reduced to seventeen years R.I.. The compensation and sentence in default thereof awarded by the trial court and upheld by the High Court shall remain intact. Benefit of section 382-B Cr.P.C. shall also remain intact.

Judge

Judge

Judge

*Bench-II*  
Islamabad  
 07.10.2021  
 (Atif)

**APPROVED FOR REPORTING.**

Judge