

JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT,
PESHAWAR
(Judicial Department)
Cr. A. No. 794-P/2020.

Date of hearing: 14.07.2022.

Mr. Abid Mehmood, advocate for the appellant.

Mr. Muhammad Nisar Khan, Addl. AG for the State.

Mr. Jehanzeb Khan Khalil, advocate for the complainant.

JUDGMENT

LAL JAN KHATTAK, J.- This appeal is directed against the judgment dated 02.10.2020 of the learned Additional Sessions Judge / Judge Model Criminal Trial Court, Peshawar, delivered in case FIR No. 1611 dated 01.11.2016 under section 302 PPC of police station *Chamkani*, Peshawar, whereby the appellant has been convicted under section 302 (b) PPC and sentenced to suffer imprisonment for life with fine of Rs. 4,00,000/- (four lac) or in default whereof to further undergo six months SI. Benefit u/s 382-B Cr.P.C. has been extended to him,

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2. Brief facts of the case are that on 01.11.2016, Tahir Khan SI (PW-9) sent *murasila* (Ex.PA/1) to the police station stating therein that on receipt of information about the occurrence he rushed to the spot and found there the dead body of one Mian Sharif son of Abdul Ghaffar lying in Flying Coach No. C-1235/DIR, where brother of the deceased namely Zulfiqar reported him that his brother was stabbed to death by the appellant

in the flying coach wherein both i.e. the appellant and the deceased were traveling to Chitral from Peshawar. It is worth to mention that the appellant was overpowered by driver of the coach and was handed over to police on the spot.

3. On conclusion of investigation, challan was put in Court which indicted the accused for commission of the offence to which he pleaded not guilty and claimed trial. Prosecution in order to substantiate its case produced and examined 13 witnesses in all, whereafter statement of the accused was recorded wherein he professed his innocence. The learned trial court, after conclusion of the trial, found him guilty of the charge and while recording his conviction sentenced him as mentioned above.

4. Arguments heard and available record gone through.

5. Perusal of the case record would show that in support of its case, prosecution produced and examined 03 eyewitnesses to the occurrence namely Abdul Wahab, Ameer Khan and Ameer-ud-Din as PWs-4, 5 & 6 respectively. PW-4 Abdul Wahab was driver of the flying coach wherein the deceased was stabbed to death. He deposed before the court that on the day of occurrence he took his flying coach from Peshawar *Adda* for *Chitral* with passengers and when the vehicle reached near the cattle market, there he heard shouting of the passengers on which he stopped



his vehicle and noted that head of the deceased was resting against the pane of window and the appellant was holding a knife in his hands. PW-4 is a natural witness being driver of the vehicle wherein the occurrence took place who has deposed in a very natural way about the occurrence. He had no enmity or ill-will towards the appellant to falsely implicate him in the case, therefore, his testimony cannot be discarded.

6. The evidence furnished by PW-4 has been supported by PW-5 and PW-6 who were traveling in the coach. PW-5 namely Ameer Khan at the relevant time was sitting on the last seat of the vehicle with the appellant and the deceased. He deposed that after covering a journey of 15/20 minutes when the vehicle reached near the cattle market there the appellant attacked the deceased with knife with which he received injuries on his person whereafter other passengers present in the vehicle overpowered him and took the knife from him. Like evidence was furnished by PW-6 namely Ameer ur Din who too was present in the vehicle as one of the passengers. All the three prosecution witnesses have deposed in a very eloquent and natural way about the occurrence. They were independent witnesses having no personal grudge to depose falsely against the appellant. The ocular account is supported by medical examination of the deceased according to which he had two injuries on vital parts of his body

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caused by knife. Besides, from possession of the appellant, the knife with which he had caused injuries to the deceased too was recovered. In addition, from the seat of the vehicle where the deceased was sitting blood has been recovered and also the investigation officer took into possession the last worn blood stained clothes of the appellant as well that of the deceased. Furthermore, complainant of the case appeared before the court as PW-7 who deposed quite in line with what he had reported in his initial report (Ex.PA/1).

7. Thorough and careful examination of the case record would show that the prosecution has proved its case against the appellant through cogent and reliable evidence and beyond any reasonable doubt and the conclusion drawn by the learned trial Court leading to establishing the charge against him are borne out of the case evidence to which no exception could be taken by this Court.

Again

8. However, the moot question for determination before this court is that whether the appellant's case falls under section 302 (b) PPC as has been held by the learned trial Court or same comes within the purview of section 302(c) PPC. Record shows that the appellant had no enmity with the deceased or any of his family members. According to the record, the appellant and the deceased met each other by chance in

the *Chitral* bound flying coach and seated on rear seat of the vehicle close to one and other when all of a sudden the unfortunate occurrence took place without any premeditation. Though the learned defense counsel did not endeavor to bring the appellant's case within the parameter of section 302 (c) PPC as no suggestion of any kind was given to the prosecution witnesses that the appellant had resorted to take the extreme step of taking the deceased life under sudden and grave provocation or under the heat of passion nor the appellant himself took such plea in his statement recorded under section 342 Cr.PC but in order to know about the root cause of the incident and to do complete justice we perused the police file by taking it from the learned Addl. AG and found therein the appellant's statement recorded under section 161 Cr.PC. According to the appellant's *ibid* statement he was seated in the vehicle on its rear seat with the deceased and shortly after covering some distance he requested the deceased who was seated against the window seat to slide the window pane so that fresh air could come as he i.e. the appellant was not feeling well and was about to vomit which request was turned down by the deceased by uttering in "*Pashto*" on which hot words were exchanged between the two whereupon the appellant took out a knife and pushed it into the deceased body as a result he received injuries with which subsequently



he died. It is worth to mention that the learned Addl. AG and learned counsel for the complainant did not dispute the version given by the appellant in his 161 Cr.PC statement.

9. In the situation mentioned above, we are of the considered view that the appellant has committed the offence under the heat of passion and without any premeditation and it is well settled that where some offence is committed without any premeditation and in the heat of passion and at the spur of moment then in such like situation, the courts of law normally award minimum sentence to the accused than the normal one by bring his case under section 302 (c) PPC.

10. Learned counsel for the complainant vehemently argued that as the appellant had acted harshly by inflicting two successive serious injuries to the deceased on vital parts of his body, therefore, his case does not fall under section 302 (c) PPC. We are not in agreement with what learned counsel for the complainant has submitted at the bar to the ibid effect because when under the heat of passion some act is done then its magnitude cannot be weighed in golden scale as it is not expected from a mentally disturbed person to main certain limits while committing a crime with disturbed mind.

11. Request of the appellant from the deceased to slide the window-pane as by then he was not feeling well and the latter's obstinacy in this





respect caused stirs in the former's disturbed mind which though in the ordinary course of event cannot be made a ground to downgrade the murder but it is settled that each criminal case is decided on its own facts and circumstances. There is no material on the record that just before the occurrence what else had happened than what is disclosed by the appellant in his 161 Cr.PC statement. Whether it was mere refusal of the deceased to slide the window pane or he had uttered something else towards the appellant shrouds in mystery which aspect of the case coupled with the fact that both the parties were not known to each other before the occurrence and that the exceeded action of the appellant was neither pre-meditated one nor it was done with any pre-existing mind can be considered to hold that the murder committed by the appellant squarely falls within the ambit of section 302 (c) PPC instead of section 302 (b) PPC and it is held so by us.



12. After holding that the murder committed by the appellant comes within the parameter of section 302 (c) PPC the next question would be about the period of imprisonment to be awarded to him. In our considered opinion, the ends of justice would meet if a sentence of 10 years imprisonment is awarded to him keeping in view of the circumstances of the case.

13. For what has been discussed above, we partially allow this appeal, modify the impugned judgment of the learned trial Court and consequently conviction of the appellant is converted from section 302 (b) PPC to section 302 (c) PPC and his sentence is reduced to ten years (10) rigorous imprisonment with benefit u/s 382-B Cr.PC, however, he shall pay the fine of Rs. 4,00,000/- as compensation to legal heirs of the deceased and in default whereof shall suffer six months SI.


JUDGE

JUDGE

Announced.
14.07.2022.