

[Supreme Court of Pakistan]

Present: Manzoor Ahmad Malik, Syed Mansoor Ali Shah and Qazi Muhammad Amin Ahmed,**JJ****ALAMGIR---Appellant****Versus****GUL ZAMAN and others---Respondents**

Criminal Appeal No. 6-P of 2010, decided on 29th April, 2019.

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

Penal Code (XLV of 1860)---

----Ss. 302(b) & 302(c)--- Qatl-i-amd--- Reappraisal of evidence---Conviction under S. 302(b), P.P.C. converted into S. 302(c), P.P.C.---Sudden fight with no previous enmity---According to the prosecution's own case the occurrence took place in a sudden encounter with no previous bad blood--
-Weapons used in the occurrence were not generally weapons of choice selected to mount an assault--
-Accused side also suffered injuries, which were conspicuously omitted in the crime report---
Circumstances of the case spelled out an occurrence that no one anticipated, and once it started it aggravated, resulting into injuries to both parties, with a heavier toll on the complainant's side---In circumstances liability of accused persons more aptly fell within the mischief of S. 302(c), P.P.C., as rightly decided by the High Court---Appeal was dismissed accordingly.

Ali Muhammad v. Ali Muhammad and another PLD 1996 SC 274 ref.

Astaghfirullah, Advocate Supreme Court for Appellant.

Nemo for Respondent No.1.

Barrister Qasim Wadud, Additional Advocate-General, Khyber Pakhtunkhwa for the State.

Date of hearing: 29th April, 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-i-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-i-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 falls within the mischief of clause (c) of Section *ibid*. The view taken by the learned High Court is in consonance with the law declared in the case titled *Ali Muhammad v. Ali Muhammad and another* (PLD 1996 SC 274), reaffirmed in the case titled *v. The State* (sic.). 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.

MWA/A-13/SC Appeal dismissed.