

IN THE FEDERAL SHARIAT COURT

(Appellate Jurisdiction)

PRESENT

MR.JUSTICE SAEED-UR-REHMAN FARRUKH
MR.JUSTICE ZAFAR PASHA CHAUDHRY.

JAIL CRIMINAL APPEAL NO.163/I OF 2004

1. Abdul Hakeem son of
Muhammad Umar,
Caste Muhammad Hassani,
Resident of Phagari Zeelag,
Tehsil Jahoo.
2. Abdul Hameed son of
Muhammad Essa,
Caste Baloch, resident of
Jabree. Tehsil Mashkay. Appellants.

Versus

The State	---	Respondent
Counsel for the Appellants.	---	Miss Ghazala Shereen, Advocate
Counsel for the State	---	Mr.M. Shoaib Abbasi, Advocate.
F.I.R. No. date & Police Station	---	No.08, dated 18-12-2002 P.S. Tehsil Jahoo, District Awaran, Baluchistan.
Date of judgment of Trial court	---	10-3-2004
Date of Institution	---	29-5-2004
Date of Hearing	---	4-10-2004
Date of Decision	---	4-10-2004

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JUDGMENT

ZAFAR PASHA CHAUDHRY, J:-

Hakeem and Abdul Hameed have come in appeal against the judgment dated 10.3.2004, passed by Mr. Zahid Ali Khan, Sessions Judge, Khuzdar, whereby both have been convicted under section 302 (b) P.P.C and sentenced to undergo imprisonment for life, each. They have also been ordered to pay Rs.50,000/- each as compensation to the legal heirs of deceased Gango. Both the appellants have also been convicted under section 392 P.P.C and sentenced to undergo the same term with a fine of Rs.50,000/-, each, in default whereof they shall undergo further three months R.I. Benefit of Cr.P.C has been extended to the appellants. The terms of imprisonment under both the counts have been ordered to run concurrently. The case property, i.e. motor cycle of deceased Gango has been ordered to be returned to the legal heirs of deceased Gango after due verification. The amount of Rs.50,000/- from the appellants has been ordered to be contributed equally.

2. The prosecution case in brief as stated in the

F.I.R Ex.P/1-A, which was registered on the afternoon of

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by the complainant Maloor, Dafedar Levies, is that on 18.12.2002 at about 5.00 p.m. he was going towards his house to have his meals. When he reached near Dati Kor he saw that two persons had held Gango and had been beating him and trying to snatch his motorcycle. The complainant was requested to rescue him. The complainant got down from his motorcycle and went forward to rescue Gango. One accused out of the two whose name was disclosed as Abdul Hameed, tried to inflict a dagger blow on his person. In the meanwhile, Gul Feroz who was coming on his bicycle behind him (the complainant) was also called for help. The accused persons whose names were subsequently revealed as Abdul Hameed and Abdul Hakeem inflicted several injuries on the person of Gango. They after snatching his motorcycle tried to run away. Maloor (the complainant) and Gul Muhammad chased them. The complainant with the help of his companions, who came to his rescue, successfully chased the appellants and then both were apprehended. They also succeeded in recovering dagger and motorcycle from their possession. The accused were taken into custody and thereafter produced before Naib Tehsildar.



3. The investigation was taken up

Tehsildar. The motorcycle and dagger were also

recovery memo to this effect was prepared. Gango

medical aid by the medical officer Jahoo. The

injured Gango was recorded by Naib Tehsildar

certified by the medical officer, which is Ex.7-B.

of injured Gango was serious, he was forwarded

further treatment but unfortunately he succumbed

and expired on 22.12.2002. On completion of the

both the accused/appellants were challaned to court

4. The trial court framed charge under section

the Offences Against Property (Enforcement

Ordinance, 1979, to which the appellants pleaded

They were put on trial. On conclusion of the same

vide judgment dated 25.3.2003, were convicted

302 (b) P.P.C and each was sentenced to life imprisonment

a fine of Rs.50, 000/-, each, which was ordered

compensation to the legal heirs of the deceased

further suffer three months S.I, each. Both were

section 392 P.P.C and sentenced to 10 years R.I



of Rs.30, 000/- each, in default to further undergo six months

S.I. each.

5. The appellant being not satisfied with the conviction, they impugned the judgment dated 25.3.2003 before this court vide Jail Criminal Appeal No.83/I of 2003. The appeal was heard on 29.10.2003. Before advancing arguments on merit, the learned counsel for the appellants pointed out that although the conviction had been recorded under section 302 (b) P.P.C and sentence had been awarded thereunder but no charge was framed under section 302 (b) P.P.C. Obviously offence under section 302 (b) P.P.C is more grave than the offence of robbery or harrabah. Conviction under section 302 (b) P.P.C without framing a distinct charge there under and examining the accused on that charge, the conviction recorded by the learned Sessions Judge suffered from material illegality, which is not curable by section 537 Cr.P.C, therefore, the case was remanded to the trial court with the following observations: -

"In the case the proof required under sub section 4 of section 17 of the Ordinance, was not available, therefore, sentence under section 392 P.P.C as tazir was imposed but the sentence under section 302 (b) P.P.C as awarded in the present case without framing a proper charge under that section is illegal. The legality or errors is not curable under

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section 537 Criminal Procedure Code. In case of error and omission, a prejudice was caused to the accused, which amounted to a miscarriage of justice. Such defect in the charge cannot be cured by the Supreme Court under section 961.

The impugned judgment, therefore, is not maintained. The same is set aside and the case is remanded to the learned Sessions Judge for framing the charge afresh as to the accused under two heads. There will be no prejudice to the accused as they will be examined afresh in the fresh charge and if they so desire, additional lead evidence may be provided."

6. After examination of the accused under section 302 (b) P.P.C read with section 304 (b) P.P.C against the appellants, both the accused/appellants were found guilty and claimed trial. The learned trial Judge on the points for determination proceeded to record evidence. The prosecution in support of the charge against appellants caused injuries to Gango deceased from Haraabah due to which he subsequently died and the accused snatched motorcycle from Gango deceased at 5.30 p.m. on 18.12.2002, examined seven witnesses in nutshell deposed to the following effect.

PW.1 Maloor Dafedar is the complainant.

He reiterated the contents of his application for F.I.R was registered. He as such narrated the

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before the court. PW.2 Jaffar is an eye witness of the incident.

According to him, he went forward to rescue Gango deceased.

He alongwith the complainant and Gul Muhammad (PW.3)

apprehended the appellants after a chase and a dagger and the

robbed motorcycle were recovered from their possession. PW.3

Gul Muhammad made a statement on the similar lines as made

by PW.2, Jaffar. As such he lends support and corroboration to

the statement of earlier two prosecution witnesses. PW.4 Badal

Khan also happened to be there and had seen the occurrence.

He saw that the appellants were beating Gango and inflicted

injuries on his person. He chased the appellants and succeeded

in apprehending them. The dagger and the motorcycle were

taken into possession. PW.5, Hussain stated that on the day of

occurrence, i.e. 18.12.2002 he was present in his fields when

Abdul Rasheed informed him that Abdul Hakeem and Abdul

Hameed had given beating to Gango and thereafter forcibly

snatched his motor cycle. Both the offenders had been arrested

by the levies force. He reached the house of Gango deceased

and found that Gango was lying in injured condition. He removed

him to a hospital in Karachi. He was medically examined and



provided medical aid. Unfortunately Gango could not

and succumbed to the injuries on 22.12.2002, after

after he was injured. PW.6 is Dr. Muhammad Nadeem

conducted the medical examination of injured Gango

the following injuries: -

1. A fresh bleeding wound noted at the interphylengeal joint of right hand.
2. Some scratches and bruises also noted on the medial side of pericardial region which was tender on palpation.
3. Left shoulder joint was dislocated and hand not move upward.
4. Multiple bruises noted at the chest region and at the buttocks, corners of head and neck.
5. The movements of both legs are normal.

Mental status: - Confused and complaining of headache.

Neck rigidity: - Positive,

CONCLUSION.

Type of injuries: - Grievous

Type of weapon used: - Blunt One.

Type of wound: - Contusion

Finding that the condition of the injured

he referred him to the Civil Hospital Karachi. He

report Ex.P/6-A. This witness also produced

death certificate of Gango Ex.P/6-B. He further



Tehsildar, Jahoo recorded the statement of the deceased in his presence.

The last witness is Noor Ahmad, Naib Tehsildar Jahoo, who carried out the investigation. He visited the place of occurrence and performed all the necessary formalities and above all recorded statement of injured Gango Ex.P/7-B. He submitted initially incomplete challan and thereafter complete challan in court on receipt of the death certificate.

7. The appellants have moved the instant appeal after they were convicted by the learned Sessions Judge on remand of the case by this court. As detailed above, fresh charge was framed in the light of the observation made by this court vide judgment dated 29-10-2003. The grievance of the appellants as made by them in the previous appeal stands redressed.

8. The learned counsel appearing on behalf of the appellants, has although argued that the prosecution witnesses are discrepant and there are variations in their statements, which make the prosecution story as doubtful Yet xxxx the learned counsel did not lay stress on this aspect of the case.

She came forward with the plea that even if the prosecution

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evidence is believed and the appellants caused the death of the deceased. The beating was given and injuries were inflicted in order to snatch the motorcycle. The offence may be considered as murder but in order to record conviction under section 302, there must be an intention to cause death. The necessity of intention for conviction under section 302 is therefore, the appellants' conviction under section 302 is not maintainable.

9. The learned counsel for the State has presented the arguments. He supports the conviction and seeks dismissal of the appeal.

10. We have gone through the evidence presented by the learned counsel and have heard the arguments.

11. As noted above, the prosecution evidence consists of the (a) ocular account, (b) the evidence of medical evidence and (d) the statement of Gangadhar in with the definition of dying declaration.

12. The ocular account is furnished by Maloor, Defedar, Levies. He is an independent witness.

an employee. He has no reason or any other motive to falsely depose against the appellants. His oral statement is supported by extremely credible circumstances. He not only saw the appellants inflicting injuries on the person of the deceased but he went forward to rescue him. One of the accused tried to cause injuries on his person. He chased the appellants and alongwith the other witnesses succeeded in apprehending the appellants after a short chase. The appellants were apprehended practically at the scene of occurrence. The dagger was recovered from their possession and the robbed motorcycle was also retrieved by him from the appellants. He submitted a formal complaint describing the incident as witnessed by him and forwarded the same to the Naib. Tehsildar for entering upon investigation. His oral statement is amply supported by the factum of recovery of stolen property i.e. the motorcycle, apprehension of the offenders and also by the fact that the same was reduced into writing as a complaint on the basis of which formal FIR was registered.

His statement is further supported by PW.2 Jaffar, PW.3 Gul Muhammad and PW.4 Badal Khan. Neither of these



witnesses have any background of enmity or ill-will towards either of the appellants. All the four witnesses made statements and corroborated each other on all material points. The details of incident have been truly furnished by these witnesses. The fact that Gango was overpowered by the appellants and that they inflicted injuries on his person, that they robbed his motorcycle and also that they were in possession of custody there and then stands fully established. The testimony of these witnesses is confidence inspiring.

13. The next set of witnesses comprises of PW.5 Dr. Muhammad Noor Baloch and PW.6 Dr. Muhammad Noor Baloch. According to PW.5 on coming to know of the incident rushed to the place where the injured was and carried him to the hospital. Dr. Muhammad Noor Baloch conducted medical examination of the injured and observed the injuries on his person as detailed in the report. He observed the infliction of injuries especially under Item No.4 and stated that these were caused on the vital parts of the body, specifically the pericardial region and head or neck on 18.12.2002. The injured Gango expired on 22.12.2002, i.e. just three days after the occurrence. During all that period he appeared



remained under medical treatment. Dr. Muhammad Noor after providing him first aid referred him to civil hospital Karachi. This witness produced a death certificate issued by Murshed Hospital as Ex.P/6-B. The signatures of Dr. Abdul Khaliq who issued the certificate, was identified by this witness. In this case autopsy was not carried out, which has been explained by the learned State counsel that in the remote areas of Baluchistan where this occurrence took place, the facility regarding post mortem examination is not available. It is true that ordinarily post mortem examination is treated as an authentic and credible evidence regarding cause of death but if in areas like the one in the present case it would be unjust to let off all culprits merely due to lack of this facility available to the prosecution. We are not oblivious to the fact that benefit of any doubt or suspicion has to go to the accused persons, but if on the basis of evidence and data available with the court, it can reliably be believed that the death occurred as a result of injuries received by the victim then it will be unjust to the deceased and to the prosecution to acquit an offender for no fault on the part of the prosecution. We have very anxiously and carefully assessed the prosecution



evidence and find that the deceased sustained injuries, taken to the doctor but the doctor finding his condition referred him to the hospital in Karachi. The injured could not survive and died as a result of those injuries. A suggestion was put forward by the prosecution that whether the deceased would have died on account of heart failure or some other heart ailment, the doctor categorically denied the suggestion that "it is incorrect to suggest that he was a heart patient". The categorical denial by the doctor ^{to be} safely inferred that the deceased was not suffering from heart ailment. In this regard the evidence of Haseeb is very helpful and relevant. According to him, when he reached the house he saw that condition of the deceased was stable. He became unconscious and doctor was called to examine him who informed that his condition was not stable, therefore, he should be removed to the hospital. The doctor informed that the necessary equipment such as ambulance and other like instruments were not available. The witness stated that Gango could not bear the injuries inflicted by him and therefore, succumbed to the injuries.

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question was put to this witness as to whether Gango suffered from any heart disease. It was expressly denied and the suggestion that Gango had sustained heart attack through falling down the motorcycle, was also refuted. By taking into account the statement of the doctor the respective data of injuries and death and also the statements of eye witnesses, it will not be unsafe to hold that Gango died on account of the injuries caused on his person by the appellants.

14. The learned counsel next contended that even if it is presumed that the injuries were caused by the appellants and he died on account of the injuries yet the fact remains that the appellants did not intend to cause his death but the intention might be of causing injuries. In absence of intention to cause death, conviction under section 302 (b) PPC cannot be made. The attention of the learned counsel was drawn to the definition as contained in section 300 PPC.

Whoever, with the intention of causing death or with the intention of causing bodily injury to a person, by doing an act which in the ordinary course of nature is likely to cause death, or with the knowledge that his act is so imminently dangerous that it must in all probability cause death, causes the death of such person, is said to commit qatl-i-amd.



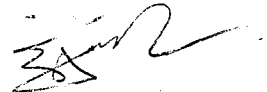
To constitute an offence of Qatl-i-amd it is not necessary that the injury should be caused with intention to cause death. If somebody inflicts injuries with intention to cause grievous hurt which in the ordinary course of nature is likely to result in death with the knowledge that his act is so imminently dangerous that it must result in death, it will be murder.

15. In the present case the injuries were inflicted on the vital parts of the body such as head, neck and chest region. If two persons keep on causing injuries on different parts of the body with such a force and severity then a reasonable person must have a knowledge that these injuries could result in death. When the result of the injuries is assessed objectively, it is clear that the injuries had in fact resulted in the death of the deceased. The argument advanced by the learned counsel in support of the contention that there is no intention to cause death therefore, that the charge under section 302 (b) PPC is not sustainable, does not stand the test of law. The intention or knowledge of the offence is to be gathered from the object for which the injuries were inflicted and the result caused. Admittedly the purpose or object of the offence was to rob the motorcycle of the deceased and cause his death.

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robbery or harrabah, as the case may be, the appellants caused such a severe and grave injuries, which ultimately resulted in death of the victim.

16. After taking stock of the entire evidence and the facts, we do not have even an element of doubt in our minds that Gango deceased did not die of the injuries received by him at the hands of the appellants and instead his cause of death is something else. The appellants' conviction therefore under section 302 (b) PPC as well as under section 392 PPC is unexceptionable. The same is therefore, upheld and maintained. The appeal is accordingly dismissed. The conviction and sentences under both the counts are maintained. As already held by the learned trial Judge, the sentence of imprisonment under both the counts shall run concurrently. Benefit of section 382-B, Cr.P.C shall remain available to the appellants.



ZAFAR PASHA CHAUDHRY
Judge



SAEED-UR-REHMAN FARRUKH
Judge

Approved for reporting.



Islamabad:4-10-2004
M.Khalil

