

**2007 M L D 935**

**[Karachi]**

**Before Rahmat Hussain Jafferi, J**

**WAZEER---Appellant**

**Versus**

**THE STATE---Respondent**

Criminal Appeal No.1 of 2006, decided on 6th October, 2006.

**(a) Penal Code (XLV of 1860)---**

---Ss. 302(b) & 302(c)---Appreciation of evidence---Presence of eye-witnesses at the scene of occurrence was not seriously challenged by defence---Evidence of eye-witnesses coupled with the evidence of the complainant had established that accused had caused the hatchet injury to the deceased---Presence of accused at the place of incident was also established by the stand taken by him that he had filed a counter-case regarding the same incident which was pending in a Court---Hatchet allegedly recovered from the accused however, was not connected with the commission of crime---No previous enmity existed between the parties and there was no motive behind the occurrence, which was not premeditated---Incident had taken place at the spur of the moment in the heat of passion over a dispute of throwing earth---Hot words and abuses exchanged by the parties had not come on record---Accused had caused a single blow to the deceased and he did not repeat the same---Deceased had remained alive for one month and 24 days after the incident---Accused had not come with the intention to kill the deceased and he had also no intention to cause such bodily injury which in the ordinary course of nature was likely to cause death of the deceased---Accused, however, had caused the injury with full knowledge that it would be so dangerous as to cause death of the deceased---Case of accused thus, fell under third part of S.300, P.P.C.---Conviction of accused under S.302(b), P.P.C. was consequently altered to S.302(c), P.P.C. and his sentence was reduced to 14 years' R.I. in circumstances.

2000 SCMR 1166; Jai Parakash v. State (1991) 2 SCC 32; Faqira v. State AIR 1955 All 321; Abdul Zahir v. State 2000 SCMR 406; Ali Muhammad PLD 1996 SC 274 and Muhammad Hanif's case 1992 SCMR 2047 ref.

**(b) Penal Code (XLV of 1860)---**

---S. 300---Qatl-i-amd---"Intention" and "knowledge"---Distinction---"Knowledge" as contrasted with "intention" signifies a state of mental realization with the bare state of conscious awareness of certain facts in which human mind remains supine or inactive---"Intention" on the other hand is a conscious state in which mental faculties are aroused into activity and summoned into action for the purpose of achieving a conceived end---"Intention" means shaping of one's conduct so as to bring about a certain event---Mental faculties in the case of "intention", therefore, are projected in a set direction---"Intention" need not necessarily involve premeditation---Whether such an intention exists or not is a question of fact.

Jai Parakash v. State (1991) 2 SCC 32 and Faqira v. State AIR 1955 All 321 ref.

**(c) Words and phrases---**

---`Intention' and 'knowledge'-Distinction.

Jai Parakash v. State (1991) 2 SCC 32 and Faqira v. State AIR 1955 All 321 ref.

**(d) Penal Code (XLV of 1860)---**

---Ss. 302 & 300---Qatl-i-amd---Crime and punishment---For punishing an offender under clauses (a) and (b) of S.302, P.P.C. the required "intention" as provided under the first and second parts of the provisions of S.300, P.P.C. should be available and proved, whereas for

punishing an offender under clause (c) of S.302, P.P.C. required "knowledge" as provided under the third part of S.300, P.P.C. should be available without the required "intention" of parts one and two thereof--Qatl-iamd which is not punishable as Qisas or Tazir will be punishable under clause (c) of S.302, P.P.C.

Abdul Zahir v. State 2000 SCMR 406 ref.

Sher Muhammad Shar for Appellant.

Habib-ur-Rahman Shaikh A.A.-G. for Respondent.

Date of hearing: 18th September, 2006.