

Eyewitness Disbelieved

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CERTIFICATE OF THE COURT IN REGARD TO REPORTING

CRIMINAL APPEAL NO. S-67 of 2010
RAMJI V/S THE STATE

SINDH HIGH COURT, CIRCUIT COURT HYDERABAD

COMPOSITION OF BENCH

HON'BLE MR. JUSTICE MOHAMMAD KARIM KHAN AGHA
(S.B.)

Date of last hearing (heard/reserved): 14-11-2023

Decided on: 20-11-2023

(a) Judgment approved for reporting YES

CERTIFICATE



Certificate that the Judgment/Order is based upon
enunciates a principle of law/decide a question of law which
of first impression/distinguishes over-rules/explains
previous decision.

Strike-out whichever is not applicable.

- NOTE: -
- (i) This slip is only to be used when some action is to be taken.
 - (ii) If the slip is used, the Reader must attach it to the top
the first page of the Judgment.
 - (iii) Court Associate must ask the Judge written the judgment
whether the judgment is approved for reporting.
 - (iv) Those directions which are not to be used should be deleted.

SGP, Kar-L (iii) 773-2000-4-2003-III

Eye witness ~~was~~ Disbelieved

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(3)

PRESENTED CRL 01/03/2010

Additional Registrar

01.3.10

IN THE HIGH COURT OF SINDH CIRCUIT COURT
HYDERABAD

CRL APPEAL NO: S-67 OF 2010

Ramji son of Karamshi, Hindu, adult,
Kolhi by caste, Resident of Zahidabad,
Taluka Hussain Bux Mari, Distt MPKhas.

at Present- Confined Central
Jail Hyd. ap

----Appellant/Convict.

Versus

The State

-----Respondent.

ORDER SHEET
IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD.

Cr. Appeal No.S-67 of 2010

DATE	ORDER WITH SIGNATURE OF JUDGE
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14.11.2023

Mr. Aziz Ahmed Laghari, Advocate for appellant.

Ms. Sana Memon, Asst. Prosecutor General, Sindh.
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I have heard the learned counsel for the appellant and learned A.P.G.
Reserved for judgment.

Hafiz Fahad

Eye witness Disbelieved

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HIGH COURT OF SINDH, CIRCUIT COURT AT
HYDERABAD

Criminal Appeal No.S-67 of 2010
[Ramji versus The State]

Appellant : Through Mr. Aziz Ahmed Leghari,
Advocate

Complainant : Complainant expired, however on
30.10.2023 his son namely Manu
appeared and reposed full faith and
confidence in learned State Counsel.

State : Through Ms. Sana Memon,
Assistant Prosecutor General, Sindh.

Date of hearing : 14.11.2023

Date of decision : 20.11.2023

J U D G M E N T

MOHAMMAD KARIM KHAN AGHA J.- Through this Criminal Appeal the appellant Ramji has impugned the Judgment dated 02.02.2010 passed by learned Sessions Judge, Mirpurkhas (Trial Court) in Sessions Case No.28 of 2006 [The State versus Ramji], outcome of Crime No.02 of 2006 registered at P.S Mirpur Old for offence punishable under Section 302 PPC, whereby he has been convicted and sentenced u/s 302(b) PPC to suffer rigorous imprisonment for life with further directions to pay Rs.50,000/- as compensation to the legal heirs of deceased under Section 544-A Cr.P.C and in case of default in payment thereof he has to further suffer simple imprisonment six months more, however, he has been extended benefit of Section 382-B Cr.P.C.

2. The brief facts of the prosecution case are as under:-

"Complainant Nathu lodged the FIR on 18.02.2006 by stating that he is farmer by profession and has three sons and six daughters; that his daughter Sht. Bawli had married with Ramji Kohli about one

year back in village Zahidabad; that yesterday he along-with his elder son Manu went to Zahidabad to see his daughter Sht. Bawli; that in the night his daughter complained them that her husband Ramji used to maltreat her on petty matters, as such he and his son tried to make Ramji understand that he should not maltreat Sht. Bawli on petty matters, due to which Ramji became annoyed; that after taking meal they all went to sleep and in the morning Ramji went towards lands for work purpose and his daughter Sht. Bawli also went behind her husband Ramji; thereafter Hario Kolhi and Diyalo Kolhi came to meet them, then he along-with his son Manu, Hario and Diyalo went towards lands to visit the crop and at about 1145 hours they heard the cries of lady from the crop of sugarcane at the distance of about four acres, hence they went inside the sugarcane crop and saw that Ramji was causing hatchet blow to his daughter, who was lying on land; that they made hakals to Ramji, who on seeing them made his escape good along-with hatchet; that his daughter became unconscious and died at the spot".

3. After usual investigation, Investigating Officer submitted his report before the concerned Magistrate, who took cognizance and then sent the case papers to learned trial Court, where copies were supplied to accused and charge was framed against him to which he plead not guilty and claimed trial.

4. In order to prove the case, prosecution examined eight (08) witnesses who exhibited various documents and other items. The statement of appellant under Section 342 Cr.P.C were recorded wherein he denied the allegations of prosecution witnesses, however, neither he examined himself on Oath nor led any evidence in his defence. The learned trial Court finally after hearing the learned counsel for the parties and considering the evidence on record convicted and sentenced the appellant/accused, as mentioned earlier in this judgment.

5. Learned trial court in the impugned judgment has already discussed the evidence in detail and there is no need to repeat the same here, so as to avoid duplication and unnecessary repetition.

6. Learned counsel for the appellant contended that impugned judgment is result of misreading and non-reading of material available on record; that the learned trial court has failed to consider that a single reasonable doubt in the case is sufficient to bring the golden rule of benefit of doubt into operation; that there are material contradictions in the evidence of prosecution witnesses which makes the case highly

doubtful and the appellant is entitled to be awarded benefit of said doubts; that learned trial Court has not considered all the facts, circumstances, conduct and attitude of the witnesses on the judicial scale though the provision of Section 367 Cr.P.C mandates so, hence on this count alone the impugned judgment is liable to be set aside; that learned trial Court has failed to consider that during cross-examination complainant had stated that "*he does not know what was written in the FIR as he is illiterate person*"; that even the complainant does not know that on whose lands this incident had happened; that learned trial Court has failed to consider that complainant is not the eye-witness of the incident as he during cross-examination stated that "*I myself had not seen accused by inflicting hatchet injuries to Sht. Bawli*", which is contradictory to the version of FIR; that PW Hario in his evidence had clearly stated that he is not the eye-witness of the incident and some persons disclosed him that Ramji had committed murder of Sht. Bawli and that delay in lodgment of FIR has not been considered and that for all or any of the above reasons the appellant should be acquitted of the charge by extending him the benefit of the doubt. In support of his contentions he has placed reliance on the cases of **MUHAMMAD ASHRAF ALIAS ACCHU versus THE STATE** [2019 SCMR 652] and, **AMIR MUHAMMAD KHAN versus THE STATE** [2023 SCMR 566].

7. Complainant had expired as reflected by the diary sheet dated 30.10.2023, however, on said date his son Manu had appeared and repösed full faith and confidence on learned State Counsel to proceed with this case.

8. Learned Assistant P.G vehemently opposed the appeal and prayed for its dismissal by arguing that appellant is nominated in FIR with specific role of causing death of his wife; that prosecution witnesses have fully supported the version of FIR and there no contradictions in their evidence; that medical evidence is supported by the ocular evidence; that parties are known to each other as such there is no question of mistaken identity. In support of her arguments she placed reliance upon the reported cases of **QASIM SHAHZAD AND**

ANOTHER versus THE STATE [2023 SCMR 117] and, AMANULLAH versus THE STATE [2023 SCMR 527].

9. I have heard the learned counsel for the appellant as well as learned A.P.G and have also perused the material available on record.

10. Based on my reassessment of the evidence of the PW's especially the medical evidence and other medical reports and recovery of blood at the crime scene I find that the prosecution has proved beyond a reasonable doubt that Mst Mrs Bawli (the deceased) was murdered by a sharp cutting instrument on or about 09.02.2006 at 1145 hours in the sugar cane crop at the land of Zahid Khan Mari deh 101 Taluka Hussain Bux Mari.

11. The only question left before me is whether it was the appellant who murdered the deceased by firearm at the said time, date and location?

12. After my reassessment of the evidence I find that the prosecution has NOT proved beyond a reasonable doubt the charge against the appellant keeping in view that each criminal case must be decided on its own particular facts and circumstances for the following reasons;

(a) The FIR was lodged within 9 hours of the incident and the delay has been reasonably explained by deceased being taken to hospital for post mortem and then released for burial and as such is not fatal to the prosecution case especially as the appellant was named in the FIR with a specific role along with the eye witness. I am however put to caution by the fact that prior to lodging the FIR the complainant consulted with the landlord Zahid Khan Mari although this might have been because he was an illiterate person.

(b) I find that the prosecution's case primarily rests on the evidence of the eye witnesses to the murder of the deceased and whether I believe their evidence whose evidence I shall consider in detail below;

(i) **Eye witness PW 1 Nathu. He is the complainant and father of the deceased.** According to his evidence he had gone to visit the deceased and the appellant and he had told the appellant to stop mistreating the deceased on petty matters. He stayed over night in the house of the appellant and the deceased. In the morning the appellant left the house followed by the deceased to his land. He,

Manu, Hario and Diaylo also went to the land. He heard cries from his daughter at sugar cane crop where upon he and the others rushed there and saw the appellant hitting the deceased with hatchet blows who ran away. Whilst he was making arrangements to take the deceased to hospital she died.

No doubt this was a day light incident and the complainant knew the accused so identification ought not usually be a problem in such cases. However I find that the complainant was a chance witness who lived 15 to 20 KM's away and he and his son PW Manu had no particular reason to visit the deceased. According to his evidence he went to Diyalo's land from where he heard cries which land is over a mile away which he then changes to 2 acres which even otherwise begs the question how he heard the cries. The sugar cane crop was above the height of his head and it does not seem plausible that he could have reached the scene of the murder and see the murder still taking place from a distance of one mile or two acres as he would have to search through the sugar cane to find out where the cries were coming from. Even during cross examination he goes back on his evidence in chief and admits that, "*I myself did not see the accused inflicting hatchet injuries to Mst Bawli*". He also had a motive to falsely implicate the appellant in that he was mistreating his daughter over petty matters. There are also numerous contradictions of a material nature between his evidence and the other eye witnesses. It does also not appeal to logic, reason and commonsense that the appellant would murder the deceased whilst her father and brother were visiting him. If he wanted to kill her he would have waited until they had left and returned back to their own village

As such for the reasons mentioned above I find that I cannot place reliance on this witness as to the identity of the person who murdered the deceased.

- (ii) **Eye witness PW 2 Manu. He is the son of the complainant and brother of the deceased.** According to his evidence one day prior to the incident he, the complainant and his mother went to the house of the appellant to Samohao him. After taking meal they went to sleep in the house of MASI Bheema and in the morning the appellant and his sister left for cutting grass. Thereafter he, the complainant, Hario and Diyalo went to visit the land of Hario from where they heard cries of a lady from the sugar cane crop. Thereafter they went to the cries where they saw the appellant causing hatchet blows to the deceased who on seeing them ran away. He went to look for a vehicle for taking the deceased to hospital but she had died by the time of his return.

Again this was a day light incident and the witness knew the accused however once again like the complainant he is a chance witness having come from his village with his father from 15 to 20 KM's away. Significantly, his

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evidence differs and contradicts the complainant's evidence in that the complainant makes no mention of his wife going to the appellants house to Samohao the appellant (or even that his wife accompanied him to the appellants village who was not examined as a witness as to her presence) and according to his evidence they all returned to sleep at MASI Bheem'a house where as according to the complainant they all slept at the appellant's house. Surprisingly, according to his evidence they then, including Hario and Diyalo who were sleeping with them, went to the appellants house for breakfast which begs the question why they did not eat breakfast at MASI's house where they slept the night and had the need to go to the appellants house for breakfast which is contrary to usual sindhi custom, practice and tradition when a relative stays at your house. There also seems to be no reason why locals Hario and Diyalo needed to stay at MASI's house which does not appeal to common sense.

According to his evidence they heard the cries of a lady from about 1 and a half to two acres away which again begs the question how he was able to hear the cries from so far away. He reached the crime scene within 15 minutes yet surprisingly he was still able to see the appellant hitting the deceased with a hatchet. This does not seem possible as the murder would have been committed within this time period and the murderer would have fled the scene of the crime. The sugar cane was 7/8 feet high and spread over 7 or 8 acres yet he was able to see the appellant murdering the deceased from one acre away. An acre is not a short distance and it is hardly believable that he would have been able to see anything amongst the 7/8 feet high sugar cane. Furthermore, PW 5 Dharmoo who was the mashir to numerous documents stated in his evidence, that *"the sugar cane crop was cultivated on 8/9 acres. The height of the sugar cane was above the height of a human being. The place of incident was not visible outside the place of the sugar cane crop"* so it beggars belief as to how this eye witness was able to see the appellant committing the murder of the deceased. PW 5 Dharmoo also states in his evidence that that, **"it is correct that accused Ramji was cultivating some land which was not the place of the incident nor the place of recovery of the hatchet"** This begs the question of how the accused came to be at the wardat with the deceased which was not his land when he had left for cutting his land. This eye witness admits not giving a Section 161 eye witness Cr.PC statement to the police and only gave his Section 164 Statement to the magistrate nearly 3 weeks after the incident. It is well settled by now that the failure to give a Section 161 Cr.PC eye witness statement for weeks on end is fatal to the evidentiary value of that statement. He was named in the FIR, his father gave his FIR on the day of the incident and as such there was no excuse in not recording his S.161 Cr.PC eye witness statement in a timely manner.

As such for the reasons mentioned above I find that I

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cannot place reliance on this witness as to the identity of the person who murdered the deceased.

- (iii) Eye witness PW 4 Hario. This alleged eye witness as per the FIR **stated in his evidence that he did not see the incident but was told about it.** He was declared hostile and was cross examined by the prosecution. During his cross examination he stated that he gave his statement because the police asked him to give the statement which they wanted. **He has not supported the prosecution case.** He was an important witness as he was an independent witness and was not related to the deceased where as all the other eye witnesses were closely related to the deceased.

Thus, I disbelieve the evidence of the eye witnesses as to the identity of the murderer and find this to be an unwitnessed murder.

Other evidence and considerations

- (c) Another alleged eye witness in the FIR Diyalo was also given up by the prosecution as soon as PW 4 Hario was declared hostile as such under Article 129 (g) Qanoon-e-Shahadat Ordinance 1984 the inference can be drawn that he would not have supported the prosecution case. This is a logical assumption as once PW Hario was declared as hostile coupled with the complainant admitting that he did not witness the incident in his cross examination it would have been important for the prosecution to call eye witness Diyalo in order to bolster their flagging case but instead he was given up by the prosecution without explanation.
- (d) That according to the evidence of the complainant the appellant left his house and went towards his land at 8am whereas the deceased left the house towards the land at 10am precisely 2 hours later and as such there is also no last seen evidence as the appellant and the deceased left the house separately 2 hours apart and there is no evidence that they both ended up at the same place approximately 2 hours later when the deceased was murdered.
- (e) That the prosecution has not proved that the appellant had any motive to murder the deceased. On the contrary it was the complainant's side who were angry about the way the appellant was treating the deceased who was their daughter.
- (f) That although the medical evidence supports the prosecution case it can only identify the nature of the injury, the seat of the injury and type of weapon used but is of no assistance in identifying the perpetrator.
- (g) In essence the only piece of evidence left against the appellant is the fact that he recovered the hatchet on his

own pointation which was made 4 days after his arrest which arrest occurred 3 days after the incident. The hatchet was allegedly found amongst the sugar cane so how the appellant was able to find it when the police were not able to do so when inspecting the wardat castes doubt on its recovery which in any event could easily have been foisted on the appellant as he suggested during cross examination of the IO.

13. Thus, based on the above discussion, I find that the prosecution has NOT proved its case against the appellant beyond a reasonable doubt and by extending the appellant the benefit of the doubt for the reasons discussed above, which he is entitled to as a matter of right as opposed to concession, I hereby set aside the impugned judgment, **allow** the appeal and acquit the appellant of the charge. The appellant on bail shall have his bail bonds discharged and he is free to go.

14. The appeal stands disposed of in the above terms.

Sajjad Ali Jessar