

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT
HYDERABAD**

Cr. Jail Appeal No.S-217 of 2007

Ghulam Muhammad Khaskheli

Versus

The State

Appellant : Ghulam Muhammad S/o Ramzan Khaskheli (Present on bail)	through Mr. G.M Laghari, Advocate
Respondent : The State	through Ms. Rameshan Oad, A.P.G. Sindh
None present for complainant	Vide order dated 23.01.2023, complainant appeared and shown his full faith and confidence in learned A.P.G.
Date of hearing	19.06.2023
Date of judgment	23.06.2023

J U D G M E N T

MOHAMMAD KARIM KHAN AGHA, J.- This criminal jail appeal is directed against the judgment dated 03.10.2007, passed by the learned 1st Additional Sessions Judge, Badin, in Sessions Case No.80 of 2001 (re: The State V Ghulam Muhammad), emanating from Crime No.66 of 2001, registered at Police Station Badin, under sections 302 PPC, whereby the appellant has been convicted u/s 302(b) PPC and sentenced to suffer imprisonment for life. He was also directed to pay fine of Rs.1,00,000/- to the legal heirs of the deceased, however, in case of default thereof the appellant was also directed to undergo R.I for one (01) year more. If the fine is recovered, the same shall be paid to the legal heirs of deceased. The appellant was awarded benefit of section 382-B Cr.P.C.

2. Facts of the prosecution case as stated in the F.I.R, are as under:-

"That complainant has seven brothers. Out of them, the third number Rajab Ali Samon has shop of Tabaco at Civil Hospital road Badin. About one year prior to lodging of this F.I.R, said Rajab Ali got married from the house of Ali Murad Khaskheli. After, the marriage the accused Ghulam Muhammad son of Ramzan Khaskheli was asking that Mst. Noor Jehan wife of deceased Rajab Ali as his betroth previously and he will see Rajab Ali. On 19.04.2001 at 8:00 P.M, said Rajab Ali was sitting at his shop, the complainant, his brother Muhammad Ramzan, maternal uncle Muhammad Yousuf Samoon were coming towards Rajab for some work and when reached near the hotel of Allahdino Soomro, they saw accused Ghulam Muhammad son of Ramzan Khaskheli armed with hatchet, gave sharp side hatchet blow to Rajab Ali which hit him on right side of his neck, who fell down and they tried to catch hold of him. In the meantime, the Electric light went off on which the accused fled-away. Thereafter, they brought the injured Hospital, where the injured succumbed the injuries. Then the complainant left the P.Ws over dead body and went to Police Station and lodged such F.I.R."

3. After usual investigation police submitted the challan against accused before the Court concerned and after completing necessary formalities, learned trial court framed charge against him, to which he pleaded not guilty and claimed trial.

4. At trial, the prosecution in order to prove its case has examined 07 witnesses and exhibited numerous documents and other items. The statement of accused was recorded under section 342 Cr.P.C whereby he denied the allegations leveled against him and claimed his false implication on account of a marital dispute. He also examined himself on oath at Ex.17 wherein he produced newspaper cutting dated 20.04.2001 at Ex.17/A however, he did not produce any defense witness to disprove the prosecution case.

5. Learned trial Court after hearing the learned counsel for the parties and evaluating the evidence available on record convicted and sentenced the appellant as set out in the earlier part of this judgment. Hence the appellant has filed this appeal against his conviction. The appellant is on bail granted by this court on account of the delay in hearing his appeal.

6. The facts of the case as well as evidence produced before the trial Court find an elaborate mention in the impugned judgment, therefore, the same are not reproduced here so as to avoid duplication and unnecessary repetition.

7. Learned counsel for the appellant has contended that the appellant is innocent and has been falsely implicated in this case on account of enmity; that the medical evidence contradicts the eye witness evidence; that there are material contradictions in the evidence of the eye witnesses; that the hatchet was foisted on him by the police and that for any or all of the above reasons the appellant should be acquitted of the charge. In support of his contentions he placed reliance on the cases of **Shahbaz Mashi V The State** [2007 SCMR 1631], **Muhammad Saleem V The State** [2010 SCMR 374], **Basharat Ali V Muhammad Safdar and another** [2017 SCMR 1601], **Haroon Shafique V The State and another** [2018 SCMR 2118], **Sikandar Ali V The State** [2023 YLR 427], **Muhammad Hayat and others V The State** [2023 YLR 280], **Hasnat Ahmed V The State** [2023 YLR 585].

8. Learned Assistant Prosecutor General Sindh on behalf of the State, after going through the entire evidence of the prosecution witnesses as well as other record of the case has supported the impugned judgment. In particular she contended that there were three eye witnesses who had correctly identified the appellant as committing the murder of the deceased; that there was no enmity between the parties; that the appellant had a motive for committing the murder as the deceased had run off with his fiancée of the appellant and married her; that the hatchet (murder weapon) had been recovered on the pointation of the appellant and as such the prosecution had proved its case against the appellant beyond a reasonable doubt and the appeal be dismissed. In support of her contentions, she placed reliance on the cases of **Muhammad Rafique alias Neela and another V The State and others** [2020 SCMR 664], **The State through P.G Sindh and others V Ahmed Omar Sheikh and others** [2021 SCMR 873], **Ghaffar Mahesar V The State through P.G Sindh and others** [2022 SCMR 1280] and **Muhammad Bashir and another V The State and others** [2023 SCMR 190].

9. I have considered the submissions of the parties and have perused the material available on record as well as the case law cited at the bar.

10. Based on my reassessment of the evidence of the PW's especially the medical evidence and other medical reports and the blood recovered at the crime scene I find that the prosecution has proved beyond a reasonable doubt that Rajib Ali (the deceased) was murdered by receiving a sharp hatchet blow to his neck on 19.04.2001 at about 8pm at the REHRA of the deceased near Allahdino Soomro Hotel situated on civil hospital road in Badin town.

11. The only question left before me therefore is whether it was the appellant who murdered the deceased by hitting him on the neck with a hatchet at the said time, date and location?

12. After my reassessment of the evidence I find that the prosecution has 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) That the FIR was lodged on the same day with promptitude. Any slight delay in Lodging the FIR has been explained by the complainant took who took the deceased to hospital after the incident and then went to the PS and lodged his FIR and as such since the slight delay in lodging the FIR has been explained based on the particular facts and circumstances of the case it is not fatal to the prosecution case. In this respect reliance is placed on the case of **Muhammad Nadeem alias Deemi V The State** (2011 SCMR 872).

(b) That the promptly lodged FIR names the appellant with the specific role of murdering the deceased by cutting his neck with a hatchet and since the FIR was lodged promptly there was no time for the complainant to cook up a false case against the appellant.

(c) 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 especially in terms of the correct identification of the appellant whose evidence I shall consider in detail below;

(i) **Eye witness PW 1 Ahmed. He is the complainant and uncle of the deceased.** According to his evidence on 19.04.2001 at 8pm he, his uncle Muhammed Yousif and brother Muhammed Rahim were coming from civil hospital road and when they reached the hotel of Allah Dino Soomro he saw the appellant coming from the opposite direction with a hatchet. He then saw the appellant give a sharp side hatchet blow to the deceased on the right side of his neck.

They tried to catch the appellant but he escaped in the darkness. The deceased fell down and they took him to civil hospital Badin where he was pronounced dead on arrival. He then went to the PS and lodged the FIR against the appellant.

From the evidence it transpires that this witness is related to the deceased who is his relative however no enmity or dispute has been proven between the eye witness and the appellant although there were differences between the deceased and the appellant. In this respect under oath the appellant states, *"it is correct to suggest that I have no enmity with the complainant party"* and thus his mere relationship to the deceased is no reason to discard his evidence which has to be judged on its own worth. In this respect reliance is placed on the cases of **Amal Sherin v The State** (PLD 2004 SC 371), **Dildar Hussain v Muhammad Afzaal alias Chala** (PLD 2004 SC 663).

This eye witness **knew the appellant before the incident** which occurred at 8pm at night. According to the evidence of the eye witness the electricity and light was available whilst he witnessed the appellant cut the neck of the deceased with a hatchet and then the light went off which enabled the appellant to make his escape good. Thus, he would have been easily able to recognize the appellant cutting the neck of the deceased especially as he was only 40 feet away as per the tapedar's evidence and sketch thus there is no case of mistaken identity and no need to hold an identification parade in order to determine the identity of the appellant who was arrested the next day.

This eye witness was not a chance witness as he lived in the area and had every reason to be where he was at the time of the incident with his other relatives PW 2 Muhammed Yousif and PW 3 Muhammed Rahim who also support his presence at the scene of the crime. He gave his S.154 Cr.PC statement with promptitude and had no time to cook up a false case against the appellant who he had no enmity or ill will with any way which might lead him to falsely implicate the appellant in this case. His S.154 Cr.PC statement was not materially improved upon during the course of his evidence. He named the accused in his FIR along with a specific role. He gave his evidence in a natural manner and was not dented at all during a lengthy cross examination and as such I find his evidence to be reliable, trust worthy and confidence inspiring and believe the same especially in respect of the identity of the appellant who murdered the deceased by cutting his neck with a hatchet.

I can convict on the evidence of this eye witness alone though it would be of assistance by way of caution if there is

some corroborative/ supportive evidence. In this respect reliance is placed on the case of **Muhammad Ehsan v. The State** (2006 SCMR 1857). As also found in the cases of **Farooq Khan v. The State** (2008 SCMR 917), **Niaz-ud-Din and another v. The State and another** (2011 SCMR 725) and **Muhammad Ismail vs. The State** (2017 SCMR 713). That what is of significance is the quality of the evidence and not its quantity and in this case I find the evidence of this eye witness to be of good quality and believe the same. In this case however there is more than one eye witness.

(ii) **Eye witness PW 2 Muhammed Yousif.** The deceased was his nephew. This eye witness in his evidence fully corroborates the evidence of **eye witness PW 1 Ahmed**. He also knew the accused, was not a chance witness and saw the appellant hit the deceased in the neck with a hatchet from relatively close range. He is named in the FIR and gave his S.161 Cr.PC statement on the same day as the incident which was not materially improved upon during the course of his evidence and had no ill will or enmity with the accused in order to implicate the accused in a false case. He gave his evidence in a natural manner and was not dented despite a lengthy cross examination and thus I find his evidence to be reliable, trust worthy and confidence inspiring and believe the same and place reliance on it.

(iii) **Eye witness PW 3 Muhammed Rahim.** He was the brother of the deceased. This eye witness in his evidence fully corroborates the evidence of **eye witnesses PW 1 Ahmed and PW 2 Muhammed Yousif**. He also knew the accused, was not a chance witness and saw the appellant hit the deceased in the neck with a hatchet and also on his thigh with the hatchet from relatively close range. He is named in the FIR and gave his S.161 Cr.PC statement on the same day as the incident which was not materially improved upon during the course of his evidence and had no ill will or enmity with the accused in order to implicate the accused in a false case. He gave his evidence in a natural manner and was not dented despite a lengthy cross examination and thus I find his evidence to be reliable, trust worthy and confidence inspiring and believe the same and place reliance on it and with the evidence of PW 1 Ahmed and PW 2 Muhammed Yousif.

Thus, based on my believing the evidence of the 3 eyewitnesses what other supportive/corroborative material is there against the appellant? It being noted that corroboration is only a rule of caution and not a rule of law. In this respect reliance is placed on the case of **Muhammad Waris v The State** (2008 SCMR 784).

(d) That it does not appeal to logic, commonsense or reason that a real relative would let the real murderer of his real relative get,

away scott free and falsely implicate an innocent person by way of substitution. In this respect reliance is placed on the case of **Muhammed Ashraf V State** (2021 SCMR 758).

- (e) That the medical evidence and medical reports fully support the eye-witness/prosecution evidence. It confirms that the deceased died from a blow to his neck and that he also received an injury to his thigh both of which were incised wounds caused by a sharp cutting weapon such as a hatchet. The cause of death was the injury to the neck. The fact that only one PW mentioned an injury to the thigh as well as to the neck I do not consider as material in the face of the other evidence of the eye witnesses which otherwise is all corroborative of each others evidence. In any event ocular evidence always takes preference over medical evidence and in this case it was simply the number of blows and one different seat of injury as opposed to the type of weapon used.
- (f) That the appellant was arrested one day later by the police and on the same day he took the police to the blood stained hatchet on his pointation which was hidden in a secret place which only the appellant would have known about.
- (g) That the blooded murder weapon (hatchet) recovered on the pointation of the appellant and as well as the appellants and deceased's clothes were covered with human blood as per a positive chemical report.
- (h) That it has not been proven through evidence that any particular police witnesses had any enmity or ill will towards the appellant and had any reason to falsely implicate him in this case, for instance, by foisting the hatchet on the appellant, and in such circumstances it has been held that the evidence of the police witnesses can be fully relied upon and as such I rely on the evidence of the police witnesses. In this respect reliance is placed on the case of **Mushtaq Ahmed V The State** (2020 SCMR 474).
- (i) That all the PW's are consistent in their evidence and even if there are some contradictions in their evidence I consider these contradictions as minor in nature and not material and certainly not of such materiality so as to effect the prosecution case and the conviction of the appellant. In this respect reliance is placed on the cases of **Zakir Khan V State** (1995 SCMR 1793) and **Khadim Hussain v. The State** (PLD 2010 Supreme Court 669). The evidence of the PW's provides a believable corroborated unbroken chain of events from the time the eye witnesses saw the appellant cut the neck of the deceased with a hatchet to the appellant escaping to the appellant being arrested the next day and leading the police to the murder weapon (hatchet) to the medical evidence supporting the eye witness evidence.
- (j) That the appellant had a motive to murder the deceased. This was because as asserted in the FIR and the evidence on record

the appellant wanted to marry Ms Noor Jehan however she was allegedly kidnapped by the deceased who later married her and thus out of revenge he murdered the deceased who had taken his potential wife from him.

(k) The newspaper report stating on 20.04.2001 that the offence had been committed by an unknown person I find to be inadmissible in evidence as it was not exhibited by its author. Even otherwise the newspaper report appears to be wrong as the FIR naming the accused was lodged on 19/20.04.2001 and appears to have been planted by the appellant to draw attention away from himself. In this respect reliance is placed on the case of **State V Ahmed Omer Shaikh** (2021 SCMR 873)

(l) Undoubtedly it is for the prosecution to prove its case against the accused beyond a reasonable doubt but I have also considered the defence case to see if it at all can cast doubt on or dent the prosecution case. The defence case is two fold (a) marital dispute and (b) absence at the time of the incident. With regard to the marital dispute as explained above this is what gave the appellant the motive to murder the deceased and not to be falsely implicated. As for his absence at the time of the incident he claims to have been arrested from the Otaq of Haji Mallah however he failed to produce any witness to support this defence. Thus, for the reasons mentioned above I disbelieve the defence case which I find to be an after thought in the face of reliable, trust worthy and confidence inspiring eye witness and other corroborative /supportive evidence against the appellant which has not at all dented the prosecution case.

13. Thus, based on the above discussion, I have no doubt that the prosecution has proved its case against the appellant beyond a reasonable doubt for the offence for which he has been convicted and hereby maintain his conviction and sentence and dismiss the appeal. The appellant on bail shall be arrested and taken into custody by SHO PS Badin and returned to Central Prison Hyderabad to serve out the remainder of his sentence. A copy of this Judgment shall be sent to SSP Badin for compliance who shall submit his compliance report before this court within 14 days of this Judgment.

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