

Conviction upheld: Confession relied upon

CERTIFICATE OF THE COURT IN REGARD TO REPORTING

806

CRIMINAL JAIL APPEAL NO. D-76 OF 2013
CONFIRMATION CASE NO. D-26 OF 2013

KHAN MUHAMMAD V/S THE STATE

SINDH HIGH COURT CIRCUIT COURT HYDERABAD

Composition of Bench

HON'BLE MR. JUSTICE MOHAMMAD KARIM KHAN AGHA

HON'BLE MR. JUSTICE RASHEED AHMED SOOMRO

(D.B)

Date of last hearing (heard/reserved): 17-06-2020

Decided on: 25-06-2020

(a) Judgment approved for reporting YES



CERTIFICATE

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

IN THE HIGH COURT OF SINDH CIRCUIT COURT HYDERABAD.

Cy. J/Appeal No. D - 76 of 2013.

Khan Muhammad S/o Muhammad

Mureed Khasakheli now confined

in central prison Hyderabad

. . . Appellant.

Vs.

The State

. . . Respondent.

CONTD.P.No. 2.

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

Criminal Jail Appeal No.D-76 of 2013

Confirmation Case No.26 of 2013

DATE	ORDER WITH SIGNATURE OF JUDGE(S)
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17.06.2020

Mr. Hameedullah Dahri, Advocate for appellant.
Ms. Safa Hisbani, Assistant P.G.

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Learned Counsel for the appellant has read out the entire evidence and also made his submissions. Learned Counsel for the State has also made her submissions. This case has been filed by the State, as such, the State is the complainant.

Reserved for judgment.


JUDGE

Shahid

Conviction upheld: Confession relied upon

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IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

Before:

Mr. Justice Mohammad Karim Khan Agha
Mr. Justice Rasheed Ahmed Soomro

Cr. Jail Appeal No.D- 76 of 2013
(Confirmation Case No.26 of 2013)

Khan Muhammad

Versus

The State

Appellant : Khan Muhammad	Through Hameedullah Dahri Advocate
Respondent : The State	Through Miss Safa Hisbani, A.P.G. Sindh
Date of hearing	17.06.2020
Date of judgment	25.06.2020

J U D G M E N T

MOHAMMAD KARIM KHAN AGHA, J.- This appeal is directed against the judgment dated 04.10.2013, passed by learned Additional Sessions Judge, Sehwan, in Sessions Case No.176 of 2010, arising out of Crime No.18 of 2010, registered at Police Station Chhachhar, under section 302 PPC, whereby appellant Khan Muhammad has been convicted u/s 302(b) PPC and sentenced to two death sentences subject to confirmation by this Court in the terms as mentioned in Point No.4 of the said impugned judgment, which is as under:-

"In view of the above discussion and reasons on the points No.01 to 03, prosecution has proved its case to the hilt to the extent of accused Khan

Muhammad, therefore, I convict and sentence to death twice accused Khan Muhammad son of Muhammad Mureed, by caste Khaskheli u/s 302 (b) P.P.C., under section 265-H(2) Cr.P.C. for causing the death of deceased Mst. Zahida and Muhammad Ismail. I also impose fine of Rs.200, 000/ under section 544-A Cr.P.C upon accused Khan Muhammad to be paid by accused Rs.100,000/- each to the legal heirs of deceased Mst. Zahida and Muhammad Ismail and in case of default in payment of fine accused shall suffer SI for six months more. The benefit u/s 382-B Cr.P.C. is extended to accused. All the sentences shall run concurrently.

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

"Complainant SIP Muhammad Iqbal Solangi lodged F.I.R. on behalf of the State stating therein that he was posted as SIP/SHO at PS Chhachhar. On 19.08.2010, when he was available at PS at 0600 hours, one person namely Khan Muhammad son of Muhammad Mureed by caste Khaskheli, resident of Sunn came at PS, who was having one Babur danda stained with blood in his hands, and disclosed that he is residing in Sunn town and he had also one female issue namely Mst. Zahida, aged about 18 years, who was residing with him in the house. On the preceding night i.e. 18.08.2010 he alongwith his other family members after taking night meals were sleeping in the house after bolting the door from inside. It was morning time, when he awoke for drinking water, he saw that his daughter Mst. Zahida was un-available on her bed, thereafter, he went in the inner room, where on the light of bulb, he saw that on the cart his daughter was sleeping alongwith one person who was his neighbour Muhammad Ismail in hugging position, on which his self-respect arose and he went outside the room and brought the danda and gave danda blows on the head of both -persons, who succumbed to their injuries. In the meanwhile, accused's wife namely Mst. Shahida was attracted from her sound sleep. She also prevented him but he did not desist and both persons lost their lives, thereafter, he closed the door from the outside and appeared at P.S. and stated that on sudden, grave provocation and self-respect he murdered both persons. His statement was recorded and such entry No.23 at 0600 hours was kept and accused was arrested, thereafter, on the pointation of accused complainant in presence of his sub-ordinate staff came in the house of accused alongwith accused in official vehicle and on his pointation both dead bodies, crime item were recovered and dead bodies were sent through police constables to hospital for post mortem."

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

4. At trial, the prosecution in order to prove its case examined 12 PWs and exhibited numerous documents and other items. The statement of the accused was recorded under section 342 Cr.P.C whereby he claimed false implication by the police. He did not examine himself on oath or call any witness in support of his defence case.
5. Learned trial court after hearing the learned counsel for the parties and examining the evidence available on record convicted and sentenced the appellant as stated above.
6. 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.
7. Learned counsel for appellant has contended that the appellant is innocent and has been falsely implicated in this case by the police; that the evidence against the appellant is shaky and full of contradictions but the learned trial court has not appreciated the same; that his wife did not support the prosecution case, that the tapedar did not make a sketch of the room in which the dead bodies were found, that his confession before the police was not voluntary and was retracted, that there was a delay in sending the chemical report and as such it could not be relied upon, that there was no evidence that the blood was kept in safe custody prior to it being sent for chemical analysis and thus the chemical report could also not be relied upon on this score, that on the same set of evidence the co-accused had been acquitted and as such he was entitled to the same treatment and thus for any of the above reasons the appellant should be acquitted by extending him the benefit of the doubt. In support of his contentions he placed reliance on the cases of **Munir Ahmad and another V The State and others** (2019 SCMR 79) and **Altaf Hussain V The State** (2019 SCMR 274).
8. On the other hand learned APG appearing on behalf of the State has fully supported the impugned judgment and in particular contended that there was no delay in lodging the FIR which ruled out any chance of cooking,

up a false story against the appellant, that all PW's support the prosecution case, that the medical evidence supports the prosecution case, that the murder weapon being the bloodied danda was recovered from the appellant, his confession was voluntary and truthful and this court can place reliance on it and as such the appeal against conviction should be dismissed and that the impugned judgment should be upheld and the confirmation reference in respect of appellant Muhammed Khan be answered in the affirmative.

9. We have heard the arguments of the learned counsel for the parties, gone through the entire evidence which has been read out by learned counsel for the appellant and the impugned judgment with their able assistance and have considered the relevant law including that cited at the bar.

10. In our view after our reassessment of the evidence based on the evidence of the PW police witnesses, IO, PW MLO's and post mortem reports, other witnesses, recovery of the bloodied danda and positive chemical report we are satisfied that the prosecution has proved beyond a reasonable doubt that on 19.08.2010 at Fajar prayer time at the house of the appellant Mst Zahida and Muhammed Ismail (the deceased) were both murdered by being bludgeoned to death by blows to their heads

11. The only issue therefore, in our view, left before us is whether it was the appellant or some other third party who murdered the deceased by bludgeoning them to death.

12. In our view after our reassessment of the evidence we find that the prosecution has proved its case against the appellant beyond a reasonable doubt and hereby uphold the convictions in the impugned judgment for the following reasons;

(a) In our view there has been no lengthy unexplained delay in lodging the FIR. The incident took place at in the early hours of 19.08.2010 and the FIR was lodged on 0600am on the same day. The FIR was lodged by the State against the appellant after he voluntarily came to the police station and narrated the fact that he had murdered both of the deceased on account of karo kari. Even in his own statement under S.342 Cr.PC the appellant admits voluntarily going to the police station to report the crime. The only difference in his account in his S.342 Cr.PC statement is that he had gone to the PS in order to report the crime committed by others as opposed to himself and the police then fixed him in a false

case. The police however had no reason to fix him in a false case and he had not suggested any enmity with the police and as such we have no reason to doubt the account of the police in the FIR. In his S.342 Cr.PC statement the appellant also admits that he saw the dead bodies of both the deceased in his house which were later taken to hospital which corroborates with the police evidence that they immediately went to the wardat after the lodging of the FIR and found the dead bodies and thus it is not disputed that the dead bodies were found in the appellants house. The lack of a tapedar's sketch thus in our view becomes irrelevant based on the particular facts and circumstances of this case.

(b) The appellant was immediately arrested and shortly thereafter confessed his guilt before a judicial magistrate in the following terms;

"Judicial confession of Appellant;

1. I am residing in the village of Raees (magnifico) Ayoob. I work for Seth Shahid. On 19.08.2010 at dawn time I alongwith Sajeel alias Sajjad, Ayaz and a third one whose name I don't remember. Ismail entered into my house. **Ismail Birhmani was sleeping with my daughter Zahida then we due to sudden provocation occurred on account of honor (ghairat) murdered Ismail and my daughter Shahida. Only I had a Danda (wooden rod). I was suggested by Sajjad and Ayaz to surrender before the police thereafter I voluntarily surrendered before the police.**

2. On the same day I voluntarily surrendered before the police on which day the incident was taken place.

3. No one has pressurized or induced me for confession.

4. No sir.

5. No sir.

6. Sir due to fear of God I am confessing.

7. Sir I know that you are a Magistrate.

8. Yes sir.

9. Sir my relatives namely Ali Sher, Ejaz, Rizwan and Wahid Bux said me to cause murder of my daughter Shahida and Ismail Birhmani and surrender before police and they will get released me **and on their advice, alongwith other co-accused have committed murders and I myself appeared at police station (surrendered)". (bold added)**

I have explained to Khan Mohammad Khaskheli (accused) that he is not bound to make confession and that, if he does so, any confession he may make be used as evidence against him and I believe that this confession was voluntarily made. It was taken in

my presence & hearing and was read over to the accused making it and admitted by him to be correct and it contains full and true account of the statement made by him."

It is settled by now that we can rely on a judicial confession even if it is later retracted if we are of the view that it had been made voluntarily with the object of telling the truth taking into account the context of the prosecution case and that most if not all the procedural safeguards have been fulfilled whilst recording the judicial confession before the magistrate. In our view we have no reason to doubt the voluntariness and truthfulness of the judicial confession when put in the context of the prosecution case and as such we rely it as against the accused. In this respect reliance is placed on the case of **Muhammad Amin V The State** (PLD 2006 SC 219). However by way of abundant caution we shall consider if there is any other supportive/corroborative evidence available which we set out below;

(i) That the evidence of PW 8 Javed Hyder who was the magistrate who recorded the judicial confession of the appellant in his evidence confirms that such a confession was made by the appellant in accordance with the law.

(ii) That the appellant did surrender voluntarily before the police and confessed his guilt according to his FIR and numerous police witnesses who had no reason to falsely implicate the appellant (PW1 HC Hajan Khan, PW 2 Muhammed Hayat, PW 4 ASI Sikander Ali and PW 11 PC Zulfiqar Ali) have corroborated this position in their evidence which fits in with his confession.

(iii) The danda which was used to bludgeon the deceased to death by hitting them over the head was recovered on the spot from the appellant when he came to the police station to register his FIR which fits in with his confession.

(iv) That the danda was blood stained and the chemical report of the blood was positive. In our view safe custody has been proven as the danda was sealed on the spot and sent to the chemical laboratory in a sealed condition as evidenced by the chemical report and no question of tampering was made. In this respect reliance is placed on the recent Supreme Court case of **Zahid and Riaz Ali V State** dated 03-03-2020 (unreported) in Jail Appeal No.172 of 2018. Although this case concerned rape since it concerned the safe custody of certain swabs being sent to the chemical examiner we consider its findings to be equally

applicable to the safe custody of blood being sent to a chemical examiner which held as under at para 5 in material part;

"The chemical examiner's report produced by the lady doctor states that the seals of specimens sent for chemical examination were received intact and it was the chemical examiner who had broken open the seals, therefore, the contention of the petitioners' learned counsel regarding the safe transmission of the specimens is discounted both by this fact as well as by the fact that no question was put regarding tampering of the said seals."

(v) The medical evidence by PW 6 Sabina Sultan and PW 11 Nabi Bux confirms that the deceased were bludgeoned to death by being hit over the head which injuries are consistent with being caused by a danda being the murder weapon and as such the medical evidence ties in with the confession.

(vi) That the appellant's confession is supported by the fact that all the persons named in his confession were made co-accused. They were most likely acquitted as the only piece of evidence against them was the uncorroborated judicial confession of the appellant. Whereas the appellants case is on a different footing since his confession has been corroborated by the FIR, evidence of other PW's, the recovery of the blood stained murder weapon which was seized from him, a positive chemical report and the medical evidence and thus his case is distinguishable from his acquitted co-accused as there is much more evidence against him keeping in view the fact that the murder also took place in his house and it was his daughter who was caught hugging another man and was murdered on account of karo kari.

© Other evidence against the appellant.

(i) That all the PW's are consistent in their evidence and even if there are some contradictions in their evidence we 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 **Zakir Khan V State** (1995 SCMR 1793). Their evidence provides a believable corroborated unbroken chain of events from the murder of the deceased in the house to the arrest of the appellant and his subsequent judicial confession.

(ii) It is well settled by now that police witnesses are as reliable as any other witness unless any ill will or enmity has been attributed to them which has not been done in this case either through cross examination or otherwise. In this respect reliance is placed on **Zafar V State** (2008 SCMR 1254), **Riaz Ahmed V State** (2004 SCMR 988) and **Muhammed Hanif V State** (SCMR 2003 1237). Like wise it is well settled that simply because a witness is

related does not make him an interested witness and unreliable unless he has reason to falsely implicate the accused, or he is biased, partisan or inimical to the accused which there is no evidence of in this case. In this respect reliance is placed on **Ijaz Ahmad V The State** (2009 SCMR 99).

(iii) The appellant has in effect taken the plea of alibi namely that he was at Nawabshah at the time of the incident and he came home and found the dead bodies and then reported the incident to the police. However, he did not give evidence on oath to this effect, he did not call any defense witness to support his claim of being in Nawabshah. Even PW 3 Ms Shahida who is his wife and is not an eye witness and who was present in the house at the time of the incident does not suggest that the appellant was away in Nawabshah. The appellant claims to have been falsely implicated by the police however we note that the appellant did not put the fact that he was at Nawabshah at the time of the incident to any PW during cross examination or suggest to any police PW that they had falsely implicated him in this case and indeed they had no reason to do so. As such we are of the view that the defense case is without merit and is an after thought on the part of the appellant in order to save his skin.

(iv) We also find that the prosecution has asserted a motive for the appellant to murder both of the deceased. Namely that the appellant came down stairs and found them hugging each other and therefore he murdered them in the name of karo/kari and honor and we find that the prosecution has proved this motive.

13. Thus, based on the above discussion especially based on the appellants own judicial confession which we find to be voluntary and true in the context of the of the prosecution case which we rely on since it is corroborated/supported by the other evidence mentioned above we have no doubt that the prosecution has proved its case against the appellant beyond a reasonable doubt.

14. With regard to sentencing we note that the appellant Khan Muhammed brutally murdered two unarmed young persons thereby snuffing out their lives before their lives had even taken root by causing them numerous blows to the head with his danda literally beating their brains out as per the medical evidence including his daughter who was pregnant at the time and in the name of so called honor which practice needs to be deterred and stamped out with an iron hand in any civilized society and as such no leniency is justified in terms of sentencing for appellant Khan Muhammed and thus the two

death sentences handed down to appellant Khan Muhammmmed in the impugned judgment are both upheld and the confirmation reference is answered in the affirmative.

15. Thus, for the reasons discussed above the appeal against conviction is dismissed, the impugned judgment and its sentences imposed therein are upheld and as such the confirmation reference in respect of appellant Khan Muhammmmed is answered in the affirmative.

16. The appeal and confirmation reference are disposed of in the above terms.