

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, MIRPURKHAS

Criminal Jail Appeal No.S-24/2024

Old No Criminal Jail Appeal No S - 97 of 2020

Appellant: Maroo son of Wanjharo Bheel
Through Mr. Mir Pervaiz Akhtar Advocate

State Through Mr. Neel Parkash
Learned Deputy Prosecutor General Sindh.

Date of Hearing: 12.10.2026

Date of Judgment: 12.10.2026

JUDGMENT

Nisar Ahmed Bhanbhro, J: Appellant Maroo has maintained this appeal against conviction awarded to him by the Court of learned 1st Additional Sessions Judge, Sanghar (Trial Court) vide judgment dated 21.12.2019 (**impugned judgment**) in Sessions Case No.415/2012 "Re-State versus Maro", stemming from FIR No.79/2012 lodged at P.S, Mangli for offence under Section 302, 334, 336 of P.P.C. Appellant was convicted for the charge of an offence punishable under section 336 of P.P.C. and sentenced to undergo rigorous imprisonment for 10 years as tazir and was also held responsible to pay compensation of Arsh equal to the amount of Diyat. Appellant was also convicted for causing injuries to Victim over her ears and nipples and was held liable to pay compensation of Arsh under Section 337- R of P.P.C equal to the amount of Diyat for each injury and in case of failure to pay Arsh, he was ordered to be dealt with in accordance

with the provisions of Section 337-X of P.P.C. The benefit of Section 382- B of Cr.P.C. was also extended to the appellant.

2. At the very outset, Learned Counsel for the appellant stated that Appellant had served out the complete sentence, but insisted to decide fate of the appeal on merits, as appellant wanted to remove the stigma of conviction against him.

3. Facts germane to the prosecution case are that on 24.10.2012 at 1230 hours, complainant Ragiyo Bheel lodged F.I.R., at Police Station Mangli, alleging therein that about seven years ago, the marriage of his daughter Shrimati (Sht.) Lali was solemnized with Maroo. From the wedlock she mothered two sons and a daughter, her infant son Arjun was aged about one month. About four days ago, Sht. Lali, her husband Maroo and infant Arjun went to Chak No.03 to the house of Chano, her brother-in-law, while they were present there. A day before, early in the morning Vishno S/O Khano Bheel came and disclosed that accused Maroo had murdered his infant son Arjun by strangulation and had caused serious injuries to Shrimati Lali and she was admitted in Civil Hospital, Sanghar by police. After receiving such information, complainant and his uncle Loniyo S/O Malhoo went to Civil Hospital Sanghar, where complainant saw his daughter Shrimati Lali critically wounded. Shrimati Lali disclosed that she was sleeping in the house of Chano Bheel when at about 0200 hours in the night time, her husband Maroo and her brother-in-law Chano awoke her and blamed her of having illicit terms with stranger persons. After that, both accused persons forcibly fell her down, accused Maroo took a blade out of his pocket and cut her ears, nose and nipples. After that, accused Maroo murdered sleeping infant Arjun by strangulating him

and escaped away. On her cries, neighbors came there and informed to the police, where after, Mangli police arrived and brought her and deceased infant to Civil Hospital Sanghar. On hearing such facts, they remained at Hospital. Mangli police handed over the dead body of infant after postmortem. After funeral ceremony of infant Arjun, he went to Police Station and lodged F.I.R., against accused persons.

4. After completion of usual investigation, police submitted challan against accused Maroo showing him in police custody, while co-accused Chanoo was declared innocent and his name was kept in column No.2 of the Challan. Learned Magistrate, sent up the case to the Court of Learned Sessions Judge Sanghar, wherefrom, it was transmitted to the Court of learned Ist Additional Sessions Judge, Sanghar for its disposal according to law.

5. In compliance to provisions of section 265-C Cr.P.C., the requisite papers were supplied to the accused, he was indicted for charge to which he pleaded not guilty and claimed for trial vide his plea. In order to prove its case, the prosecution examined P.W-01 Lonio Bheel, P.W-02 Sadoo Bheel (Mashir) who produced memo of injuries, memo of place of incident of murder and inspection of dead body, memo of inspection of place where injured received injuries, memo of recovery of clothes of deceased and memo of recovery of crime weapon viz. Blade, P.W-03 Wishno Bheel, P.W-04 Complainant Raghio Bheel, who produced copy of F.I.R., P.W-05 Injured Shrimati Lali, who produced her 164 Cr.P.C statement, P.W-06 Dr. Shabir Ahmed Jat, who produced police letter, Lash Chakash Form (inquest report), and postmortem report of deceased Arjun, P.W-07 Tapedar Abdul Karim Umrani, who produced police letter and sketch of

place of incident in triplicate, P.W-08 P.C Mubarak Ali Soomro, who produced receipt of handing over of dead body of deceased, P.W-09 I.O. SIP Ashraf Ali Zardari, who produced memo of arrest of accused Maroo and Confessional Statement of accused Maroo, P.W-10 Atta Mohiudin Jat (I.O. SIP), who produced memo of arrest of let off accused Chano, P.W-11 Dr. Kanta Lohano, who produced police, Provisional Medical Certificate of injured Shrimati Lali and Final Medical Certificate, P.W-12 Irshad Hussain Qureshi Family Judge & Judicial Magistrate Sanghar, who produced police letter for recording Confessional Statement and Jail warrant of accused and P.W-13 Qurban Ali Rajar (Inspector), thereafter, the learned DDPP for the state closed the side of prosecution evidence. The learned defence counsel filed an application under section 227 of Cr.P.C to alter the charge, however the same was dismissed as not pressed vide order thereon dated 03.08.2018.

6. At the close of prosecution evidence, the statement U/S 342 Cr.P.C of accused Maroo was recorded, wherein he denied the allegations leveled against him and prayed for justice, however, neither he examined himself on oath nor led any evidence in defence.

7. Learned Trial Court after hearing the parties through Learned Counsel, convicted the appellant as aforementioned, hence this appeal.

8. Learned counsel for the appellant contended that the appellant is innocent and has been falsely implicated in this case by the complainant due to matrimonial dispute. He further contended that except Sht. Lali there is no eyewitness to the incident; that the incident allegedly took place in the house of Cheno, brother of the appellant, who was also implicated in the FIR but was subsequently let off by the police. He

further contended that no time, date and place of incident has been described by the witnesses as such no criminal liability can be sustained. He contended that the witnesses Loonio and Vishno did not support the prosecution's case and were declared hostile. He further contended that confession of the appellant was made under duress and coercion and the same could not be treated as voluntary. He further contended that after recording the confessional statement, the appellant was handed over to the police. He further submitted that the appellant's statement under Section 342 Cr.P.C was defective in nature, as he was not confronted with every incriminating piece of evidence, which was a mandatory requirement under Sections 342 Cr.P.C. He further argued that conviction was not recorded in respect of the murder of the appellant's son, as such the prosecution failed to prove charge for offence of murder, and if the trial court did not believe the evidence of witnesses regarding murder, then the same evidence cannot be relied upon to convict the appellant. He further contended that appellant was a poor person and despite having served out the conviction, he was behind bar for non payment of Arsh amount. He placed reliance upon the case of Muhammad Sarafarz Vs. The State (PLD 2013 SC 386), Muhammad Shah V. The State (2010 SCMR 1009), The State V. Muhammad Naseer (1993 SCMR 1822), Amin Ali V. The State (2011 SCMR 323) and Nawab Siraj Ali V. The State (2020 SCMR 119). Lastly, he prayed to allow this appeal and acquit the appellant of the charge.

9. Conversely, learned D.P.G contended that the appellant was specifically nominated in the FIR. He contended that there was no eyewitness of the incident, except the injured Sht. Lali herself and during trial she has fully implicated the appellant. He further contended that the

appellant caused injuries to injured over nipples, nose, and the both ears; that the weapon of offence viz. blade, was recovered from the possession of the appellant. He contended that the learned trial Court had convicted the appellant on proper appraisal of evidence as prosecution established the guilt of the appellant beyond any reasonable doubt, justifying the maintenance of his conviction. He therefore prays for dismissal of the appeal.

10. Heard arguments and perused the material available on record.

11. Learned Counsel for the appellant has attacked upon the prosecution case, on account of delay in registration of F.I.R. From the perusal of the material on record, it transpired that incident took place on 23.10.2012, whereas F.I.R of the incident was recorded by the father of the victim Sht. Lali on the next day. Complainant was not aware about the incident, but was informed by witness Vishno that his maternal grandson was killed and his daughter Sht. Lali was critically injured by appellant Maroo, he came to visit his daughter at hospital. Initially, the F.I.R was registered against Maroo and Chano and after investigation, Chano was declared innocent and not referred for trial. The report furnished by Investigation Officer for innocence of let - off accused Chano was accepted by the Learned Magistrate, and remained unchallenged, therefore attained finality. The delay in registration of F.I.R. raises presumption that accused might have been involved in the offence after consultations and deliberation. If established that F.I.R contained trumpeted charges, the accused gets benefit of the same. But delay per se in laying information to police is not always fatal to the prosecution case, if the same was result of some unavoidable circumstances beyond the control of the party. In the

present case injured Sht. Lali was the wife of Appellant, she was brutally injured under a vengeance or pretext of having maintained illicit relations. The information was laid to the police by the father of victim, as victim herself was critically injured and remained hospitalized for a period of about two. In such circumstances delay in registration of FIR did not lend favor to the defence and stood plausibly explained and was natural in the facts and circumstances of the case.

12. The contention of the Learned Counsel for the appellant that complainant Rughio, the father of the victim did not directly depose against the appellant and witnesses Vishno, Sadho and Loonio did not support prosecution case and they were declared hostile, therefore, prosecution case had become doubtful, is without substance. Appraisal of the evidence revealed that witnesses Rughio, Vishno, Sadho and Loonio were not the eye witnesses of the incident, their evidence was hearsay in nature and did not in any manner discredit the prosecution story. Since the above named witnesses were not present at the time, when offence was committed, therefore, categorically deposed that they were not aware of the incident but were informed by victim. As such they deposed truth and their evidence was natural and in line with the prosecution story.

13. The content that there was no eye witness of the incident except Sht. Lali and her evidence cannot be safely relied upon being solitary in nature, is also not supported from the record. In the present case Sht. Lali was the star witness, she sustained injuries at the hands of appellant. It transpired that during investigation, the statement under Section 164 Cr.P.C of the victim Sht. Lali was recorded before Learned Magistrate on 29.11.2012, wherein she specifically nominated her husband, the present

appellant for torturing her and committing brutality. Describing the abhorable act of the appellant, she stated that during the night hours, appellant took her to the nearby lands, where he tied her hands and legs and cut her nipples, nose, and ears. The victim Sht. Lali supported the version in F.I.R. She was referred to Civil Hospital, Sanghar, where she was examined by the Medical Legal Officer (MLO) Dr Kanta. In her evidence before Trial Court Dr Kanta deposed that parts of nose, ear and nipples of victim were cut with a sharp cutting weapon, which corroborated the ocular account tendered by victim Sht. Lali. Though prosecution witnesses were declared hostile but their evidence was not of any significance as they were not the eye witnesses of incident. It is by now well settled that it is the quality and not the quantity of evidence which weighs with the Courts to decide any case, therefore, the ocular account furnished by a single witness, if found confidence inspiring and trustworthy can be safely relied upon. Prosecution case rested upon the evidence of injured Sht. Lali, who was cross-examined by defence but no question rebutting the sustaining injuries at the hands of appellant was put to her which tantamount to admission. Sht. Lali remained consistence on all material aspects of the case qua the role of the appellant during the occurrence and her evidence is confidence inspiring and trustworthy, besides being wife of the appellant, there existed no reasons to falsely involve the appellant.

14. As a rule of criminal jurisprudence, prosecution evidence is not tested on the basis of quantity but quality of evidence. It is not that who is giving evidence and making statement. What is relevant is, what statement has been given and it is not the person but the statement of that person which is to be seen and adjudged.

15. In the case of **Niaz-ud-Din v. The State** (2011 SCMR 725), it was held by Honorable Supreme Court that conviction in a murder case can be based on the testimony of a single witness, if court is satisfied that he is reliable and it is the quality of evidence and not the quantity which matters. The same was the view of the Honorable Supreme Court in the case of **Asim v. The State** (2005 SCMR 417), **Lal Khan v. The State** (2006 SCMR 1846) and **Muhammad Sadiq v. The State** (2022 SCMR 690).

16. In this view of the matter, even if the testimony of witnesses Raghio, Vishno and Loonio is discarded, the evidence of victim Sht. Lali is sufficient to sustain conviction of the Appellant. On this aspect of the case, learned counsel for the Appellant could not convince the Court so as to arrive at a different conclusion than what has been tendered by the learned Trial Court. Sht. Lali was cross examined by the defence but nothing favourable to the Appellant or adverse to the prosecution could yield. She remained consistent on each and every material aspect of the case inasmuch as she deposed exactly according to the circumstances happened in this case, therefore, it can safely be concluded that the ocular account furnished by the injured star witness witnesses is reliable, straightforward and confidence inspiring. The medical evidence available on the record corroborates the ocular account so far as the nature, time, and locale of the injury on the person of the victim is concerned. Even otherwise, it is settled law that where ocular evidence is found trustworthy and confidence inspiring, the same is given preference over medical evidence. Learned counsel for the Appellant could not point out any reason as to why the

complainant and injured who is wife of the accused has falsely involved the appellant in the present case and let off the real culprit.

17. During the course of proceedings, the learned counsel contended that there are material discrepancies and contradictions in the statements of the eye- witnesses but on our specific query he could not point out any contradiction, which could shatter the case of the prosecution. It is a well settled proposition of law that as long as the material aspects of the evidence have a ring of truth, courts should ignore minor discrepancies in the evidence. The test is whether the evidence of a witness inspired confidence or not. If an omission or discrepancy goes to the root of the matter, the defence can take advantage of the same. While appreciating the evidence of a witness, the approach must be whether the evidence read as a whole appears to have a ring of truth. Minor discrepancies on trivial matters not affecting the material considerations of the prosecution case ought not to prompt the courts to reject evidence in its entirety and to shake the salient features of the prosecution case.

18. So far as the recovery of weapon of offence i.e. blade is concerned, the same remained of no help for prosecution case as independent witness associated during the recovery proceedings did not support prosecution case and secondly the blade was not blood stained. Keeping in view the fact that recovery is disbelieved and inconsequential, will not even absolve appellant of the guilt. The recovery is a corroboratory piece of evidence, if it was not proved, it would not absolve the accused of the charge of commission of crime,

which otherwise stood established through convincing and confidence inspiring evidence.

19. Adverting to the issue of the confessional statement of the appellant, per learned Counsel that the same was obtained through duress and coercion. It appeared from record that Appellant Maroo was arrested on 30.10.2012 and on the very next day, he was produced before the concerned Magistrate for recording his confessional statement. In his confessional statement, the appellant confessed his guilt and stated that he caused injuries to avenge Sht. Lali for her alleged illicit extra marital relations, and from said relationship Arjun was born. Though appellant while recording his statement under section 342 Cr.P.C. retracted from his confessional statement and stated that it was obtained by the police through torture. But record reflected that on production of appellant before Learned Magistrate, he was kept under the custody of court staff and police personal were directed to leave the court premises. Appellant was given sufficient time for reflection and thereafter his statement was recorded. Appellant was also informed before recording his confessional statement that he was not required to confess and if he made any statement the same shall be used as an evidence against him and if appellant refused to record statement he will not be handed over to police. Before recording statement, body of the appellant was examined through court staff and no injury was found on the person of appellant. It further transpired from record that after recording of confessional statement, the appellant was sent to Central Prison Sanghar under judicial custody and was not handed over to the I.O. of the case. The learned Magistrate after recording the statement has appended certificate through his hand at the bottom of the statement available at page No. 83 of the R&Ps, to say that the confession was voluntary and contained a correct account of the

statement made by the appellant. No material was placed on record to suggest that confessional statement was the result of torture and duress. As such this piece of the evidence was rightly relied upon by Learned Trial Court.

20. Cruelty against a woman, under the pretext of honor cannot be dealt with in a run off a mill manner. In the present case, Sht. Lali was subjected to inhuman torture for allegedly having an illicit relationship, which in the opinion of the appellant was sufficient reason to subject her to such degree of torture. Nose of a person, in our society is treated as a symbol of honor, sole aim to cut the nose of victim Sht. Lali was to attack her modesty and respect and honor in the society. The torture against woman for such bald allegations reminded the old stone age periods, but cannot be let to perpetuate in present days.

21. Contention of the Learned Counsel for the appellant that since murder of infant Arjun was not proved and appellant was acquitted by learned Trial Court for the charge of an offence punishable under section 302 P.P.C. therefor, entire prosecution case became doubtful, is without substance. If an accused faces charges of multiple offences in a single trial and on appraisal of evidence, the Court concludes that guilt of one of the offences was not established, but accused was found guilty of remainder of the charges, the conviction can be safely maintained for the offence proved. Reliance in this regard is placed upon the case of **IJAZ AHMED Versus The STATE and others** reported as **2022 S C M R 1577**, wherein Honorable Supreme Court of Pakistan maintained the conviction and sentence of the accused under section 302(b), P.P.C. and set aside the conviction and sentence awarded to the accused under section 392, P.P.C, as the same was not proved.

22. So far as the issue of inability of convict to pay the amount of Diyat due to weak financial resources of the appellant is concerned. In the case of **Government of Punjab v. Abid Hussain** (PLD 2007 SC 315) the Honorable Supreme Court of Pakistan issued directions to the Federal Government to frame rules on the subject. In order to implement the decision of the Supreme Court, section 338 G of P.P.C. was amended through the Pakistan Penal Code (Amendment) Ordinance, 2007 (VI Of 2007), empowering the Federal Government to create fund by making rules. The Ordinance was re-promulgated time and again. The last Ordinance in this regard was promulgated on 20th April, 2010; Ordinance No.VII of 2010; which was later on passed by the Parliament namely Pakistan Penal Code (Amendment) Act, 2010 (Act No. XV of 2010) dated 22nd June, 2010. The Federal Government established Diyat, Arsh and Daman Fund and framed its rules by invoking sub-section (2) of section 338G P.P.C. to provide financial assistance to the convicts who are confined in jails on account of non-payment of Diyat, Arsh and Daman amount.

23. The preliminary purpose of this fund is to provide financial assistance to the prisoners who are languishing in jails on account of non-payment of Diyat, Arsh and Daman amount to the legal heirs of victim due to poverty and weak financial position. Soft loans or financial grants out of fund are being provided to the convict prisoners who full fill the prescribed criteria. The Federal Government placed this fund under the administrative control of Ministry of Law, Justice and Human Rights. As provided in rule 5 of Diyat ,Arsh and Daman Fund Rules 2007, the Administrative Committee delegated all powers to Provincial Sub-

Committees, to be chaired by Home Secretaries and having a member of the Federal Government for the disposal of business. The Provincial Sub-Committee scrutinize, process and recommend the eligible cases to the Administrative Committee for its consideration and approval for the grant of amount out of Diyat, Arsh and Daman Fund. The Administrative Committee of Diyat, Arsh, and Daman approve the cases recommended by the Provincial Sub-Committees. The Administrative Committee is responsible for management, control and disbursement of fund.

24. The Diyat, Arsh and Daman Fund Rules, 2007, provide four types of remedies for convicts unable to pay the amounts of Diyat, Arsh or Daman subject to the terms and conditions specified therein, namely; (i) provisions of Soft Loans, (ii) grant out of the Fund, (iii) release on Parole, and (iv) facilitation for Jobs. In such view of the matter, the Appellant is at liberty to approach the administrative committee constituted under the Rules for the management of the Fund. Similarly, the Appellant can also approach the Trial Court under section 331 P.P.C. for payment of Diyat amount in installments. Once approached, the administrative committee or the Trial Court as the case may be shall consider the case of Appellant in accordance with law and rules.

25. Review of the case laws relied upon by the learned Counsel for the appellant manifested that facts and circumstances of the instant case were different and with utmost respect the same are distinguishable.

(i) In the case of **Muhammad Sarfaraz** (supra) it was held that prosecution cannot be permitted to confront a witness with his previous statement recorded under section 161 Cr.P.C. during the course of cross examination after being declared hostile

as it would amount to using it for corroboration rather than contradiction. Since the evidence of witnesses, who were declared hostile, was hearsay in nature therefore mistake of allowing to cross examine them on the part of Trial Court was not fatal to prosecution case.

(ii) In the case of **Muhammad Shah** (Supra) it was held that all incriminating pieces of evidence, available on record must be put to the accused while recording his statement under section 342 Cr.P.C. Though question of recovery of blade was not put to the accused in statement under section 342 Cr.P.C, but the said question was of no consequence as all the other incriminating pieces of evidence were confronted to appellant, therefore, it can be safely held that statement under section 342 Cr.P.C. was properly recorded.

(iii) In the case of **Muhammad Naseer** (Supra) it was held the confession of accused recorded under section 164 Cr.P.C. was not voluntarily; as after recording of confessional statement he was sent back to the police lock-up. In the present case after recording confessional statement, the appellant was remanded into judicial custody and sent to Central Prison Sanghar.

(iv) In the case of **Amin Ali** (Supra) it was held that merely because the witness had injuries on his person will not stamped to be truthful witness. In the present case Sht. Lali is the wife of Appellant, she was critically wounded and rather was defaced by cutting nose, ear and nipples. She remained consistent in her evidence and during cross examination her evidence remained un-shattered, as no question rebutting the charge was put to her. Omission to cross examine the witness on material points

amounted to admission, as such evidence of injured witness was confidence inspiring and rang truth.

(v) In the case of **Nawab Siraj Ali** (Supra) it was held that evidence of the prosecution witnesses was full of material contradictions and medical evidence also did not support the prosecution case, therefore, a doubt was created in the prosecution case, the benefit of which ought to go to the accused. In the present case medical evidence is in line with ocular testimony and no contradiction has been pointed out.

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26. As a result of the above discussion, no case for interference is made out, this appeal fails and is accordingly dismissed.

27. Let copy of this Order be sent to Appellant through concerned superintended of jail for information. The jail superintendent is also directed to forward the case of Appellant to the Committee constituted under Daman, Arsh and Diyat Fund Rules, 2007 for grant of funds for payment of Arsh, if appellant so desired.

Approved for reporting

Judge