

IN THE HIGH COURT OF SINDH AT KARACHI

Present:

Mr. Justice Mohammad Karim Khan Agha

Criminal Jail Appeal No.269 of 2020

Appellant: Qurban Ali S/o Abdul Karim Soomro
through Ms. Abida Parveen Channar, Advocate

Complainant: Through Mr. Sanaullah Soomro, Advocate

Respondent/State Through Mr. Saleem Akhtar Buriro, Addl.
Prosecutor General, Sindh.

Date of hearing: 26.03.2024

Date of announcement: 01.04.2024

J U D G M E N T

Mohammad Karim Khan Agha, J.- Appellant Qurban Ali son of Abdul Karim Soomro has preferred this appeal against the impugned judgment dated 10.03.2020 passed by the Additional Sessions Judge-I/Model Criminal Trial Court, Thatta in Sessions Case No.329 of 2015 at PS Makli U/s 302 & 504 PPC; whereby the appellant was convicted under Section 302(b) PPC as Tazir and sentenced him to undergo R.I. for life. He shall also pay an amount of Rs.100,000/- to the legal heirs of the deceased as compensation. Such compensation shall be recoverable as arrears of land revenue. However, in case of default in payment of such compensation, the appellant shall undergo S.I. for six months. The appellant was extended benefit of Section 382-B Cr.P.C.

2. The brief facts of the prosecution case are that on 30.07.2015 at 1730 hours at Halath Nali/Bridge, located in deh Samki, adjacent to the hotel of Hussain Soomro Taluka and District Thatta, accused Qurban Ali son of Abdul Karim Soomro caused death to deceased Muhammad Hanif Soomro by inflicting him hatchet injuries.

2

3. After completion of usual investigation charge was framed against the accused, in which he pleaded not guilty and claimed to be tried.

4. In order to prove its case, the prosecution examined 07 witnesses who exhibited various documents and other items in support of the prosecution case. Thereafter, the learned Deputy District Public Prosecutor for the State closed the side of prosecution. The statement under section 342 Cr.PC of the accused was recorded wherein he rebutted the allegations of prosecution and took plea that he has been falsely booked in this case due to enmity on account of family dispute. However, the accused neither examined himself on oath nor produced any witness in his defence.

5. After hearing the learned counsel for the parties and assessment of evidence available on record, learned trial Court vide judgment dated 10.03.2020, convicted and sentenced the appellant as stated above, hence this appeal has been filed.

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 that he has been falsely implicated in this case by the complainant and the police on account of enmity and hence the two day delay in lodging the FIR; that the eye witnesses are unreliable as they are all related to the complainant and the deceased; that the murder weapon (hatchet) was foisted on the appellant by the police and that for any or all of the above reasons the appellant should be acquitted by extending him the benefit of the doubt. In support of her contentions, she placed reliance on the cases of Amin Ali and another vs. The State (2011 SCMR 323), Sardar Bibi and another vs. Munir Ahmed and others (2017 SCMR 344), Saeed Ahmad vs. Muhammad Nawaz and others (2012 SCMR 89), Irshad Ahmed vs. The State (2011 SCMR 1190) and Muhammad Asif vs. The State (2017 SCMR 486).

8. Learned Additional Prosecutor General Sindh and learned counsel for the complainant after going through the entire evidence of the prosecution witnesses as well as other record of the case supported the impugned judgment. In particular, they contended that any delay in lodging the FIR had been fully explained; that the FIR named the appellant with the specific role of attacking the deceased with a hatchet; that the eye witnesses evidence was trust worthy,

reliable and confidence inspiring and could be fully relied upon; that the murder weapon (hatchet) had been recovered from the accused at the time of his arrest a day after the lodging of the FIR; that the medical evidence supported the ocular evidence and as such the prosecution had proved its case beyond a reasonable doubt and the appeal be dismissed. In support of their contentions, they placed reliance on the cases of *Noor Muhammad v The State* (1999 SCMR 2722) and *Wazir Gul v The State* (PLD 1995 Karachi 112).

9. I have heard the learned counsel for the appellant as well as learned APC and learned counsel for the complainant and have also perused the material available on record and the case law cited at the bar.

10. Based on my reassessment of the evidence of the PW's, especially the medical evidence and the blood recovered at the scene of the crime I find that the prosecution has proved beyond a reasonable doubt that Muhammed Hanif (the deceased) was seriously injured by hatchet blows on 30.07.2015 at 5.30pm which lead to his death later in the day at Halat Nali Bridge situated in Deh Simki, adjacent to the hotel of Hassan Soomro taluka district Thatta.

11. The only question left before me therefore is who murdered the deceased by hatchet at the said time, date and location?

12. After my reassessment of the evidence on record, I find that the prosecution has proved beyond a reasonable doubt the charge against the appellant for which he was convicted for the following reasons;

- (a) It is true that the FIR was lodged after a delay of about 2 days and such delay can be fatal to the prosecution case unless the reason for the delay is explained. In this case it has come in evidence that the deceased was seriously injured by hatchet blows at about 5.30pm. He was then rushed to Civil Hospital Thatta for emergency treatment but on account of the seriousness of his injuries he was referred to civil hospital Karachi where he was pronounced dead on arrival. The body was then transported back to civil hospital Thatta for post mortem and after post mortem it was handed over to the family who buried the body the next day and then the complainant lodged the FIR. It is quite natural that the first reaction of any family member would be to try to save the injured rather than lodge an FIR which was done in this case. Once the dead body had been returned to the family it is also understandable that as per Muslim tradition the priority was to bury the dead body as soon as possible which was done and there after the FIR was immediately lodged. As such I find the delay in lodging the FIR to be fully explained based on the particular facts and circumstances of the case. Even otherwise PW 7 Pir Muddassar Shah who was the IO in his evidence states that immediately after the incident the complainant had told him that the

appellant had murdered his father and asked him to come to the hospital which he did. This ties in with the complainant's own evidence and the FIR and as such immediately after the incident and even prior to lodging the FIR the police had already been informed by the complainant who the alleged murderer was so there was no time for the complainant to cook up a false case two days later against the appellant as from the outset the police already knew that the appellant had been accused on the murder. Thus based on the particular facts and circumstances of this case I find that the delay in lodging the FIR has been adequately/fully explained and as such 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) The appellant is named in the FIR with the specific role of murdering the deceased by with a hatchet. Even otherwise no specific/proven enmity has come on record between the appellant and the complainant or any PW which would motivate him/them to lodge a false case or give false evidence against the appellant.
- (c) The prosecution's case rests on the eye witnesses to the murder whose evidence I shall consider in detail below;

(i) **Eye witness PW 1 Wali Muhammed.** He is the complainant and the son of the deceased. According to his evidence on 30.07.2015 he, the deceased and his cousins Aijaz and Zahid Soomro were sitting at Halath Mori near Hussain Soomro hotel when at about 5.30pm the accused came with a hatchet and started to abuse his father. When his father tried to placate the accused the accused assaulted his father with a hatchet hitting him on the head and the arm. His father then fell down and when they attempted to catch the accused he warned them off by threatening to kill them before making his escape good. He took his father to civil hospital Thatta and informed the police who arrived. Since his father was seriously injured he was referred to civil hospital Karachi where his father succumbed to his injuries on the same day.

Admittedly the eye witness was related to the deceased who was his father however it is well settled by now that evidence of related witnesses cannot be discarded unless there is some ill will or enmity between the eye witnesses and the accused which has not been proven in this case by any reliable evidence. In this respect reliance is placed on the cases of **Ijaz Ahmed V The State** (2009 SCMR 99) **Nasir Iqbal alias Nasra and another v. The State** (2016 SCMR 2152) and **Ashfaq Ahmed v. The State** (2007 SCMR 641).

This eye witness knew the appellant before the incident and it was a day light incident and he saw the appellant from close range when he hit the deceased with the hatchet and as such there is no case of mistaken identity. Based on the particular facts and circumstances of the case he lodged his FIR shortly after the incident as explained earlier in this judgment which was not materially improved on during the course of his evidence. He was not a chance witness as he was sitting with

his father close to their home. He had no proven enmity or ill will with the appellant which would lead him to implicate the appellant in a false case. He gave his evidence in straightforward manner and was not damaged during cross examination. I find his evidence to be reliable, trust worthy and confidence inspiring especially in relation to the identification of the appellant and believe the same and place reliance on it.

It is well settled by now that I can convict the accused on the evidence of a sole eye witness provided that I find his/her evidence to be trust worthy, reliable and confidence inspiring, and in this case I have found the evidence of this eye witness to be trust worthy, reliable and confidence inspiring especially in respect of the correct identification of the appellant and as such I believe the same and place reliance on it. In this respect reliance is placed on the cases of **Muhammad Ehsan v. The State** (2006 SCMR 1857), **Farooq Khan v. The State** (2008 SCMR 917), **Niaz-ud-Din and another v. The State and another** (2011 SCMR 725) **Muhammad Ismail vs. The State** (2017 SCMR 713) and **Qasim Shahzad and another v The State** (2023 SCMR 117).

There are however 2 other eye witnesses.

(ii) These are eye witnesses PW 2 Aijaz Ali and PW 3 Zahid Ali. Both of them are related to the complainant. They both saw the appellant who they knew cause two hatchet blows to the deceased in the head and arm respectively. They are not chance witnesses as they live in the area and happened to be at the same area as the complainant and his father. They knew the accused from before so there is no case of mistaken identity in this day light incident which they saw from a short distance. They both gave their S.161 Cr.PC statements immediately after recording of the FIR which was within 2 days of the incident. They are both named in the FIR as eye witnesses. There is no major improvements from their evidence and their S.161 Cr.PC statements. They corroborate the evidence of the complainant in all material respects as well as each other. They were not dented despite a lengthy cross examination and they had no ill will or enmity to implicate the appellant in a false case and as such the same considerations apply to their evidence as to that of the complainant. As such I believe their evidence which I find to be trust worthy, confidence inspiring and reliable and as such I place reliance on their evidence and believe the same.

Having believed the evidence of the three eye witness I turn to consider the corroborative/supportive evidence whilst keeping in view that it was it was held in the case of **Muhammad Waris v. The State** (2008 SCMR 784) as under;

"Corroboration is only a rule of caution and is not a rule of law and if the eye witness account is found to be reliable and trust worthy there is hardly any need to look for any corroboration"
}

- (d) That it does not appeal to logic, commonsense or reason that a real son would let the real murderer of his real father get away scot 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 post mortem report fully support the eye-witness/prosecution evidence that the deceased died from receiving a sharp incised blow to his head as well as to his arm which was where the eye witnesses in their evidence stated he was hit by a hatchet which would cause such injuries.
- (f) That the appellant was arrested one day after the incident FIR was lodged behind his house along with the murder weapon which was stained with blood. It is strange that the appellant would keep the blood stained murder weapon with him for two days but no question of it having been foisted was put to him and even other wise this is only a piece of circumstantial /supportive evidence which cannot take priority over confidence inspiring ocular evidence which I have already beleived. It has also com in evidence that the appellant was a bit of a vagabond so it might well be that he retained the murder weapon in his possession.
- (g) As per chemical report the hatchet was also found to be stained with human blood.
- (h) That there was no ill will or enmity between the police and the appellant and as such they had no reason to falsely implicate the appellant in this case. For instance by foisting the hatchet on him. Under these circumstances it is settled by now that the evidence of police witnesses is as good as any other witness. In this respect reliance is placed on the case of **Mustaq Ahmed V The State** (2020 SCMR 474). Thus, I believe the evidence of the IO and other police witnesses who were not dented during cross examination.
- (i) That all the PW's are consistent in their evidence and even it 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 appellant abusing the deceased and then hitting him with a hatchet over the head and arm to the appellant being taken to the hospital where he died from his injuries to the arrest of the appellant with the hatchet in his possession.-
- (j) 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 caste doubt on or dent the prosecution case. The defence case as set out by the appellant is simply false implication on account of a family dispute but nor an iota of evidence was brought on record to support this dispute and even there how serious it was. The appellant did not give evidence on oath or call a single defence witness in support of his claim of false implication on account of enmity and did not even elaborate

on the nature of that enmity. Thus, in the face of reliable, trust worthy and confidence inspiring eye witness evidence and other supportive/corroborative evidence discussed above I disbelieve the defence case which has not at all dented the prosecution case.

13. Thus, based on the above discussion, I find that the prosecution has proved its case against the appellant beyond a reasonable doubt for the offence for which he has been convicted and sentenced in the impugned judgment and as such his appeal is **dismissed**.