# IN THE HIGH COURT OF SINDH AT KARACHI

**Present:**
*Mr. Justice Mohammad Karim Khan Agha*

## CRIMINAL JAIL APPEAL NO.554 OF 2020

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| Appellant: | Anwer son of Jumoon Machi through Mr. Muhammad Hanif Noonari, Advocate. |
| Respondent/State: | Mr. Khadim Hussain Khuharo, Addl. Prosecutor General, Sindh. |
| Date of hearing: | 27.03.2024 |
| Date of announcement: | 03.04.2024 |

## JUDGMENT

**Mohammad Karim Khan Agha, J.-** Appellant Anwer son of Jumoon Machi has preferred this jail appeal against the impugned judgment dated 28.11.2020 passed by the learned Additional Sessions Judge-I/Model Criminal Court Thatta, in Sessions Case No.317 of 2018 arising out of F.I.R. No.146 of 2018 u/s. 302(b) PPC registered at P.S. Mirpur Sakro; whereby the appellant was convicted and sentenced to undergo rigorous imprisonment for life as *Ta'zir* with direction to pay compensation of Rs.1,00,000/- to the legal heirs of deceased Mst. Bhagi as provided under Section 544-A Cr.P.C; such compensation shall be recoverable as arrears of land revenue. In case of default of such compensation, the appellant shall suffer six months more simple imprisonment. However, benefit of section 382-B Cr.P.C. is extended to the appellant.

2. The brief facts of the prosecution case are that on 26.10.2018, at 1330 hours, at the house of accused Anwer son of Jumoon Machi located in Deh Dhobro, Taulka Mirpur Sakro, District Thatta, he caused death of his wife deceased Mst. Bhagi by causing her hatchet injury **when she refused to provide him water on his demand.**

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

4. In order to prove its case the prosecution examined 08 witnesses who exhibited various documents and other items in support of the prosecution case where after the prosecution closed its side. The appellant/accused recorded his statement under section 342 Cr.P.C. whereby he denied the prosecution allegations. However, the appellant 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 28.11.2020 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 has been falsely implicated in this case by the complainant party and hence the delay of 2 days in lodging the FIR; that there are no eye witnesses to the incident and even if there is these eye witnesses are related to the complainant and as such there evidence cannot be safely relied upon; that the appellant's confession before the police is inadmissible in evidence; 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 or in the alternative based on the particular facts and circumstances of the case his conviction be converted to one under S.302 © PPC and he be sentenced accordingly.

8. The service on the complainant has been held good by this court and as such learned APG was protecting his interests. Learned Additional Prosecutor General Sindh after going through the entire evidence of the prosecution witnesses as well as other record of the case supported the impugned judgment. In particular, he contended that any delay in lodging the FIR had been fully explained and as such was not fatal to the prosecution case; that the appellant was named in the FIR with the specific role of murdering his wife 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 on the pointation of the appellant from a hidden place in the

bushes and as such the prosecution had proved its case beyond a reasonable doubt and the appeal be dismissed or in the alternative the appellant's conviction be converted to one under S.302 © PPC based on the particular facts and circumstances of the case.

9. I have heard the learned counsel for the appellant as well as learned APG 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 crime scene I find that the prosecution has proved beyond a reasonable doubt that Mst Bhagi (the deceased) was murdered by hatchet on 26.10.2018 at about 1330hours inside the house of the appellant situated in Deh Dhobro, Taluka Mirpur Sakro 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 **not** proved beyond a reasonable doubt the charge against the appellant u/s 302 (b) PPC **but has proved beyond a reasonable doubt the charge against the appellants u/s 302 (c) PPC** for which I now convict him 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 a hatchet blow at about 1.30 am on 26.10.18. She was then rushed to Mirpur Sakro Hospital but as no lady MLO was present she was referred to civil Hospital Thatta which was some distance away where she died and the post mortem was carried out on her. Her dead body was then returned to her relatives who brought back the same to Mirpur Sakro who buried the body as soon as they could 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. The lack of delay in lodging the FIR however is clinched by the police departure entry dated 26/10/2018 at 1340 hours which reveals that the police were informed at that time (being immediately after the incident) that the accused had caused hatchet injuries to the deceased which lead to her death in hospital which was exhibit 12/A as such the police immediately after the incident knew that the accused had been

nominated for murdering the deceased. As such I find the delay in lodging the FIR to be fully explained based on the particular facts and circumstances of the case 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 of 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 with a hatchet **after she refused to get him a glass of water immediately because she was feeding her baby**. Even otherwise no specific/proven enmity has come on record between the appellant and the complainant or any PW or even the deceased 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 2 Sadam. The deceased is his sister.** According to his evidence the incident took place on 26.10.2018 at about 1:30 p.m when he was in his house with PW Suleman and other family members. Accused Anwer Machi came and asked deceased Mst. Bhagi to bring him some water. She told him that she was breastfeeding her suckling daughter Shahnaz and that she would do it. **Accused Anwer Machi got infuriated and he caused a sharp side of hatchet below to deceased Mst. Bhagi on the back of her head. Both PW Suleman and myself saw that blood was oozing from the injury and accused Anwer Machi ran away.** I called my brother Abdul Latif on his cell phone. He asked me to take the dead body of the deceased to police station. We accordingly took it there and after getting letter we went to Government Hospital Sakro. The police and doctors saw the dead body and carried out necessary legal formalities but since there were no doctors available, we were referred to Civil Hospital Thatta.

Admittedly the eye witness was related to the deceased who was his cousin 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 as such there

is no case of mistaken identity. He gave his S.161 Cr.PC statement with promptitude which was not materially improved on during the course of his evidence. He was not a chance witness as he was living in the next shed to the appellant and the deceased. He is named in the FIR as a witness. He had no proven enmity or ill will with the appellant which would lead him to give false evidence against the appellant. He gave his evidence in straightforward manner and was not damaged during a lengthy 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).

**(ii) Eye witness PW 5 Sullemen. The deceased is his relative.** His evidence corroborates the evidence of eye witness PW 2 Sadam in all material respects. He knew the appellant from before in this day light incident which he saw from close range and as such there is no case of mistaken identity or need for an identification parade. **He saw the appellant hit the deceased over the head with a hatchet after she refused to get him water immediately because she was breast feeding her baby.** He is not a chance witness. He is named in the FIR as a witness. He gave his S.161 Cr.PC statement with promptitude which was not materially improved on during the course of his evidence. He had no proven enmity or ill will with the appellant which would lead him to give false evidence against the appellant. He gave his evidence in straightforward manner and was not damaged during a lengthy 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.

Even if these eye witnesses did not witness the murder of the deceased by the appellant (which I have already found above that they did) their evidence is sufficient to convict the appellant on the doctrine of last seen evidence as laid down in the cases of **Fayyaz Ahmed V State** (2017 SCMR 2026) and **Muhammed Abid V State** (PLD 2018 SC 813) as both the eye witness saw the appellant enter the house where his wife was

with her baby and then run away a few minutes later leaving his wife dead when the other circumstantial evidence is taken into account.

Having believed the evidence of the eye witnesses to the murder I turn to consider the corroborative/supportive evidence whilst keeping in view that 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 real relative of the deceased would let the real murderer of their real relative 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 it was quite natural for the appellant to be at the murder scene as the murder occurred in his own house where he and his wife and baby were living.

(f) The promptly recorded S.154 Cr.PC statement of the complainant which became the FIR was not materially improved on during the complainant's evidence and he was not damaged during cross examination. Admittedly, his evidence is only hearsay but it is also fully corroborative of the eye witness evidence

(g) That the medical evidence and post mortem report and other medical documents fully support the eye-witness/prosecution evidence that the deceased died from receiving **a single hatchet injury to her head** which was where the eye witnesses in their evidence stated she was stabbed.

(h) That the appellant was arrested one day after the FIR was lodged being two days after the incident and 2 days after his arrest he confessed to the crime to the police and then lead the police on his pointation to where he had hidden the murder weapon (hatchet) in the bushes/jungle area. Admittedly, the confession before the police is inadmissible in evidence however his pointation of the murder weapon hidden in the bushes/jungle area in a place which only he could have known about is evidence against the appellant.

(i) As per chemical report the hatchet which was recovered on the pointation of the appellant was also found to be stained with human blood.

(j) 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.

proved its case in respect of this offence against the appellant beyond a reasonable doubt and hereby convict him and sentence him for this offence. In this respect reliance is placed on the case of **Azmat Ullah V The State** (2014 SCMR 1178) which held as under;

> *"A bare perusal of the FIR, the statements made by the eye-witnesses before the learned trial Court and the findings recorded by the learned courts below clearly shows that there was no background of any ill-will or bitterness between the appellant and his deceased brother and that the incident in issue had erupted all of a sudden without any premeditation whatsoever. The medical evidence shows that the deceased had received one blow of a churri on his chest whereas another blow was received by him on the outer aspect of his left upper arm. The doctor conducting the post-mortem of the dead body had categorically observed that both the injuries found on the dead body of the deceased could be a result of one blow of chhurri. These factors of the case squarely attract Exception 4 contained in the erstwhile provisions of section 300, PPC. It has already been held by this Court in the case of Ali Muhammad v. Ali Muhammad and another (PLD 1996 SC 274) that the cases falling in the exceptions contained in the erstwhile provisions of section 300, PPC, now, attract the provisions of section 302(c) PPC. **The case in hand was surely a case of lack of premeditation, the incident was one of a sudden fight which was a result of heat of passion developed upon a sudden quarrel and no undue advantage had been taken by the appellant nor had he acted in a brutal or unusual manner. In these circumstances Exception 4 contained in the erstwhile section 300, PPC squarely stood attracted to the case in hand and, thus, the case against the appellant fell within the purview of the provisions of section 302(c) PPC."*(bold added)

Further reliance is placed on the cases of **Raza and another v The State** (2020 SCMR 1185) and **Alamgir v Gul Zaman and others** (2019 SCMR 1415).

13. Based on the above discussion I find that the prosecution has not proved its case against appellant under S.302 (b) PPC but the prosecution has proved its case against the appellant under S.302 (c) PPC beyond a reasonable doubt and as such the appellant's conviction under S.302 (b) PPC is converted in to a conviction under S.302 (c) PPC and the appellant is sentenced to RI for 14 years with the benefit of S.382 (B) Cr.PC.

14. The appeal is disposed of as modified above.