

IN THE HIGH COURT OF SINDH AT KARACHI

Present:

Mr. Justice Mohammad Karim Khan Agha

CRIMINAL JAIL APPEAL NO.135 OF 2022

Appellant:	Nazeer son of Eidoo Mallah through Mr. Iftikhar Ahmed Shah, Advocate
Respondent:	The State through Mr. Muhammad Iqbal Awan, Addl. Prosecutor General, Sindh
Date of hearing:	20.03.2024
Date of announcement:	25.03.2024

J U D G M E N T

Mohammad Karim Khan Agha, J.- Appellant Nazeer son of Eidoo Mallah has preferred this appeal against the impugned judgment dated 08.02.2022 passed by the learned Additional Sessions Judge-I/Model Criminal Trial Court, Thatta in Sessions Case No.510 of 2020 under F.I.R. No.93/2020 U/s. 302 PPC registered at P.S. Sujawal; whereby the appellant was convicted under Section 302(b) PPC as Tazir and sentenced to undergo imprisonment for life. He was also required to pay Rs.1,00,000/- as compensation payable to the legal heirs of the deceased. Such compensation was to be recoverable as arrears of land revenue. However, in case of default of payment of such compensation, the appellant shall undergo further S.I. for six months. The appellant was extended benefit of Section 382-B Cr.P.C.

2. Brief facts of the prosecution case are that on 15.04.2020 at 0730 hours at the house of accused Nazeer Mallah situated near Saeed Pur within the limits of police station, taluka and district Sujawal, accused Nazeer caused death to his wife deceased Mst. Shabnam by inflicting her hatchet blow.

3. After completion of usual investigation, a formal charge was framed against the accused person wherein he pleaded not guilty and claimed to be tried.

4. In order to prove its case the prosecution examined 06 witnesses who exhibited various documents and other items in support of the prosecution case where after the prosecution closed. Thereafter, the statement of the appellant under section 342 Cr.P.C. was recorded in which he rebutted the allegations of prosecution and has taken plea that he is innocent and falsely implicated and was away for 2 to 3 days at the time of the murder. However, the appellant neither examined himself on oath nor produced any witness in his defence.

5. After hearing the parties and assessment of evidence available on record, the learned trial Court vide judgment dated 08.02.2022 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; that there was a delay in lodging the FIR of 17 hours; that the eye witness is a chance witness and being related to the deceased his evidence cannot be safely relied upon; that the murder weapon being the hatchet was foisted on him by the police; that the appellant had no motive for the murder and that for any or all of the above reasons the appellant be acquitted by extending him the benefit of the doubt.

8. Learned Additional Prosecutor General Sindh who was also representing 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, he contended that there was no delay in lodging the FIR which named the appellant with the specific role of murdering the deceased by hatchet; that the evidence of the sole eye witness 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 hidden place in the bushes and as such the prosecution had proved its case beyond a reasonable doubt and the appeal be dismissed. In support of his contentions, he placed reliance on the cases of *Muhammad Nadeem alias Deemi v The State* (2011 SCMR 872), *Muhammad Ismail v The State* (2017 SCMR 713), *Arshad Mehmood v The State* (2005 SCMR 1524), *Qasim Shahzad and another v The State* (2023 SCMR 117), *Amal Sherin v The State* (PLD 2004 SC 371) and *Muhammad Akram v The State* (2003 SCMR 855).

9. I have heard the learned counsel for the appellant as well as learned APC 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 Shabnam (the deceased) was murdered by hatchet on 15.04.2020 at about 07.30hours at the house of the accused situated near Nai Sayed Pur Deh Samki Taluka and District Sujawal.

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) That the FIR was lodged after a delay of about 17 hours. Such delay has been fully explained by the complainant who called the police to the crime scene after the murder and then took the body of the deceased to hospital where the postmortem was carried out and then when the body was returned to him after burial he then lodged the FIR. Thus based on the particular facts and circumstances of this case I find that the delay in lodging the FIR has been adequately 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. Thus there was no time for the complainant to cook up a false case against the appellant. 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 against the appellant
- (c) The prosecution's case primarily rests on the sole eye witness to the murder whose evidence I shall consider in detail below;
 - (i) Eye witness PW 1 Haji Muhammed. He is the complainant and the deceased was his daughter. According to his evidence earlier the deceased who was his daughter had come to his residence to celebrate Shab-e-Barat with the appellant who was her husband and had then left for home with him. On the day of the incident he and late PW Mubarak (deceased before he could give evidence at trial) at 7 to 7.30am at breakfast time went to visit the deceased/daughter at the appellant's house who when they entered the house were having breakfast. He then saw the appellant attack the

deceased with a hatchet on her neck on which she fell down from a short distance from him. The appellant then ran away and they did not intervene as the appellant had a hatchet and he and Mubarak were unarmed. He called his brother Gul Muhammed who came there along with the police. After completing legal formalities the body was taken to the hospital for a postmortem after which he took the dead body home for burial and then lodged the FIR.

Admittedly the eye witness was related to the deceased who was his daughter 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 witness 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 as he was married to his daughter and was his son in law and it was a day light incident where he saw the appellant from close range hit his daughter with a hatchet in the neck in the house of the appellant who died from such hatchet injury. As such there is no case of mistaken identity and no need to have an identification parade. As discussed above he lodged his FIR with promptitude under the particular facts and circumstances of the case which was not materially improved on during the course of his evidence. He was not a chance witness as he was the father of the deceased who lived close by and came to meet the deceased/daughter at breakfast time which is quite natural. He had no proven enmity or ill will with the appellant which would lead him to falsely implicate the appellant in this case. He gave his evidence in a 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 as I find it to be of high quality. 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)**.

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Having believed the evidence of the sole eye witness 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 a real father would let the real murderer of his real daughter 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 murder took place in the house of the appellant. It therefore begs the question as to why he did not immediately lodge the FIR concerning the murder of his wife rather than roam around for a further day without doing anything and did not even go home. This does not appeal to natural human conduct. The fact that the murder of his wife had happened in his own house and he failed to offer any kind of explanation for the death of his wife also goes against the appellant. In this respect reliance is placed on the cases of **Arshed Mahmood** (Supra) and **Muhammed Akram** (Supra)
- (f) That the medical evidence and post mortem report fully support the eye-witness/prosecution evidence that the deceased died from receiving an incised wound to the neck which was where the eye witness in their evidence stated the deceased was hit by the hatchet.
- (g) That the appellant was arrested one day after the incident and only 3 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 bushes in a jungly area near his own house. Admittedly, the confession before the police is inadmissible in evidence however his pointation of the murder weapon hidden in the bushes in a place which only he could have known about is evidence against the appellant.
- (h) As per chemical report the hatchet which was found on the pointation of the appellant in a hidden place of which only he could have known about was also found to be stained with human blood.
- (i) 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 who was not dented during cross examination.
- (j) 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 appellant murdering his wife with a hatchet to him running away and being arrested the next day to him leading the police to the murder weapon on his pointation in a hidden place which only he could have known about.

- (k) 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 as set out by the appellant in his S.342 Cr.PC statement is that he was not there at the time of the incident and remained absent for a few days thereafter and has been falsely implicated in this case. The appellant however did not reveal where he was at the time of the murder and who he was with. Furthermore, the appellant did not give evidence on oath and did not call a single witness in support of his defence case. He was arrested one day after the incident so he could not have been out of the house for 2 to 3 days at the time of the murder. The complainant had no reason to implicate the appellant in a false case as there was no ill will or enmity between them. 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.